

Lowry Crook  
May 26, 2022

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION

-----x

STATE OF NORTH DAKOTA,  
Plaintiff,

v. Civil No. 1:19-cv-00150-DMT-ARS

THE UNITED STATES OF AMERICA,

Defendant.

-----x

DATE: May 26, 2022

TIME: 10:00 a.m.

Videotaped Deposition of LOWRY CROOK,  
appearing on behalf of Defendant, taken by the  
Respective parties, held via videoconference by  
all participants, before MICHAEL WILLIAMS, a  
Notary Public of the State of New York and  
Registered Professional Court Reporter.

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<p style="text-align: right;">Page 2</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 FOR THE PLAINTIFF:</p> <p>5 GREENBERG TRAURIG, LLP</p> <p>6 1000 Louisiana Street, Ste. 6700</p> <p>7 Houston, Texas 77002</p> <p>8 BY: PAUL SEBY, ESQ.</p> <p>9 -and-</p> <p>10 PAUL KERLIN, ESQ.</p> <p>11 seby@gtlaw.com</p> <p>12 lerlin@gtlaw.com</p> <p>13</p> <p>14 FOR THE DEFENDANT:</p> <p>15 UNITED STATES ATTORNEY'S OFFICE</p> <p>16 DISTRICT OF COLORADO</p> <p>17 1801 California Street, Ste. 160026 Court Street,</p> <p>18 Denver, Colorado 80202</p> <p>19 BY: ERICA ZILLOLI, ESQ.</p> <p>20 -and-</p> <p>21 LOGAN STEINER, ESQ.</p> <p>22 erica.m.zilloi@usace.army.mil</p> <p>23 logan.steiner@usdoj.gov</p> <p>24</p> <p>25 FOR THE DEFENDANT:</p> <p>26 OFFICE OF THE GENERAL COUNSEL</p> <p>27 104 Army Pentagon, Rm 3C546</p> <p>28 Washington, DC 20310</p> <p>29 BY: ZAHEER H. TAJANI, ESQ.</p> <p>30 zaheer.h.tajani.civ@army.mil</p> <p>31</p> <p>32 ALSO PRESENT:</p> <p>33 James Soto, Jr. - Videographer</p> <p>34 Rachel Hymel - Trial Tech</p> <p>35</p>	<p style="text-align: right;">Page 4</p> <p>2 I N D E X</p> <p>3 WITNESS EXAMINATION BY PAGE</p> <p>4 Lowry Crook Paul Seby 7</p> <p>5 E X H I B I T S</p> <p>6 PLAINTIFF DESCRIPTION PAGE</p> <p>7 (All exhibits 318, 406-407, 410-417, 419-421,</p> <p>8 423-425, 427-430, 432-433, 443 and 446 premarked</p> <p>9 and referred to by attorney)</p> <p>10 L I T I G A T I O N S U P P O R T</p> <p>11 M A R K E D F O R R U L I N G</p> <p>12 QUESTION PAGE/LINE</p> <p>13 (None)</p> <p>14 R E Q U E S T S F O R P R O D U C T I O N</p> <p>15 DESCRIPTION PAGE/LINE</p> <p>16 (None)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>2 F E D E R A L S T I P U L A T I O N S</p> <p>3 IT IS HEREBY STIPULATED AND AGREED by and</p> <p>4 between the counsel for the respective parties</p> <p>5 hereto, that the filing, sealing, and</p> <p>6 certification of the within deposition shall be</p> <p>7 and the same are hereby waived;</p> <p>8 IT IS FURTHER STIPULATED AND AGREED that</p> <p>9 all objections, except as to the form of the</p> <p>10 question, shall be reserved to the time of trial.</p> <p>11 IT IS FURTHER STIPULATED AND AGREED that</p> <p>12 the within deposition may be signed before any</p> <p>13 Notary Public with the same force and effect as</p> <p>14 if signed and sworn to before this court.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Crook</p> <p>2 THE VIDEOGRAPHER: Participants</p> <p>3 should be aware that this proceeding is being</p> <p>4 recorded and, as such, all conversations held</p> <p>5 will be recorded unless there's a request and</p> <p>6 agreement to go off the record.</p> <p>7 This is the remote video-recorded</p> <p>8 deposition of Lowry Crook. Today is Thursday,</p> <p>9 May 26, 2022. The time is now 2:01 p.m. UTC,</p> <p>10 10:01 a.m. Eastern.</p> <p>11 We are here in the matter of the</p> <p>12 State of North Dakota versus the United States of</p> <p>13 America. My name is James Soto, Jr., remote</p> <p>14 video technician on behalf of U.S. Legal Support.</p> <p>15 I am not related to any party in</p> <p>16 this action, nor am I financially interested in</p> <p>17 the outcome.</p> <p>18 At this time, will the reporter,</p> <p>19 Mikael Williams, on behalf of U.S. Legal Support</p> <p>20 please enter the statement for remote proceedings</p> <p>21 into the record.</p> <p>22 THE REPORTER: The attorneys</p> <p>23 participating in this deposition acknowledge that</p> <p>24 I am not physically present in the deposition</p> <p>25 room and that I will be reporting this deposition</p>

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2 remotely.

3 They further acknowledge that, in

4 lieu of an oath administered in person, I will

5 administer the oath remotely.

6 The parties and their counsel

7 consent to this arrangement and waive any

8 objections to this manner of reporting.

9 Please indicate your agreement by

10 stating your name and your agreement on the

11 record.

12 MR. SEBY: This is Paul Seby,

13 counsel for the plaintiff, and I concur.

14 MS. ZILLOLI: This is Erica Zilloli,

15 counsel for the United States, the defendant, and

16 I concur.

17 MR. KERLIN: This is Paul Kerlin,

18 also for the plaintiff, and I concur.

19 MS. STEINER: This is Logan Steiner,

20 also for the defendant, the United States, and I

21 concur.

22 MR. TAJANI: This is Zaheer Tajani,

23 I concur.

24 THE REPORTER: Will the witness

25 kindly present his government-issued

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2 identification by holding it up to the camera for

3 verification.

4 (Witness complies.)

5 LOWRY CROOK,

6 called as a witness, having first been duly

7 sworn, testifies as follows:

8 EXAMINATION

9 BY MR. SEBY:

10 MR. SEBY: So this is the sworn

11 deposition of Lowry Crook taken pursuant to prior

12 notice and agreement of counsel.

13 Q. Good morning, Mr. Crook. My name is

14 Paul Seby. I'm both an attorney with the law

15 firm of Greenberg, Traurig and a Special

16 Assistant Attorney General for the State of North

17 Dakota.

18 Together with Mr. Kerlin, we

19 represent the State of North Dakota in this

20 matter, and today I'll refer to North Dakota as

21 the State or North Dakota.

22 Do you understand that you've been

23 sworn in this morning?

24 A. Yes.

25 Q. And, please, state your full name

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2 for the record.

3 A. Lowry Alexander Crook.

4 Q. Thank you.

5 Before we go in, I'd like to go over

6 some basic ground rules for the deposition, most

7 of which are simply intended to help the court

8 reporter and videographer, for that matter, take

9 down everything we say, okay?

10 A. Yes.

11 Q. Everything we say is being written

12 down and videotaped and because of that, I would

13 ask you to verbalize your responses with a yes or

14 a no or other answer, as you may wish, as opposed

15 to simply just nodding your head up or down or

16 side to side. Also, please, no uh-huhs or

17 nu-huhs, if that's acceptable to you, sir?

18 A. Yes.

19 Q. Okay.

20 Likewise, it's difficult for the

21 court reporter to take down what we are saying if

22 we inadvertently talk over one another.

23 So I will do my best not to

24 interrupt, and you if you would do the same that

25 would be great. Please try not to interrupt me,

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2 and let me finish any questions if I'm asking

3 one.

4 Is that acceptable?

5 A. Yes.

6 Q. And if you need a break, sir, just

7 let me know. If there's a question pending, I'd

8 ask you to please answer it, and then we can take

9 whatever break is needed, and I think maybe we

10 should have a break every hour or so,

11 approximately.

12 So we'll just keep an eye out for

13 that and, otherwise, if you need one with any

14 different frequency, just let me know, please.

15 If you do not understand a question,

16 also, please just let me know. Ask me to repeat

17 it or rephrase it, and I will do my best to

18 clarify what I'm trying to ask you; and if you

19 understand a question and answer it, I'm going to

20 assume that you have understood it and that there

21 is no need for clarification.

22 Is that okay?

23 A. Yes.

24 Q. Okay.

25 Mr. Crook, is there anyone with you

Object to  
all  
testimony  
as to  
hearsay,  
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<p style="text-align: right;">Page 10</p> <p>1 Crook</p> <p>2 in the room this morning?</p> <p>3 A. Yes.</p> <p>4 Q. And who would those individuals be?</p> <p>5 A. Counsel for the U.S. attorney's</p> <p>6 office and for the Army.</p> <p>7 Q. And if you'd identify those</p> <p>8 individuals by name.</p> <p>9 A. Sorry. Erica Zilloli and Zaheer</p> <p>10 Tajani.</p> <p>11 Q. Okay.</p> <p>12 Would you please turn off your</p> <p>13 electronic devices so that you're not distracted</p> <p>14 during the deposition.</p> <p>15 If I -- let's see, are you relying</p> <p>16 on any notes with you this morning, sir?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 And, Mr. Crook, do you understand</p> <p>20 that you're obligated by oath to tell the truth</p> <p>21 today?</p> <p>22 A. Yes.</p> <p>23 Q. And do you understand that portions</p> <p>24 of your videotaped deposition may be played to</p> <p>25 the court if this case were to go to trial?</p>	<p style="text-align: right;">Page 12</p> <p>1 Crook</p> <p>2 prepare for your deposition today?</p> <p>3 A. Met with counsel and prepared.</p> <p>4 Q. Okay.</p> <p>5 Who did you meet with?</p> <p>6 A. Counsel who's in the room with me</p> <p>7 right now.</p> <p>8 Q. Anyone else?</p> <p>9 A. And Logan, who's on the I think</p> <p>10 virtually here.</p> <p>11 Q. Yes.</p> <p>12 When did you meet with any of those</p> <p>13 individuals?</p> <p>14 A. I think we met two or three times</p> <p>15 over the last couple of weeks. I don't remember</p> <p>16 the exact days.</p> <p>17 Q. Did you meet physically in person or</p> <p>18 by telephone?</p> <p>19 A. I think twice over Zoom and once</p> <p>20 physically in person but with Logan virtually.</p> <p>21 Q. How long did you meet on those</p> <p>22 occasions?</p> <p>23 A. I think it was two or three hours</p> <p>24 each time.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 11</p> <p>1 Crook</p> <p>2 A. Yes.</p> <p>3 Q. And do you understand your</p> <p>4 deposition today has the same force and effect as</p> <p>5 if you were in front of a judge or a jury?</p> <p>6 A. Yes.</p> <p>7 Q. And do you understand that if you</p> <p>8 fail to tell the truth today that is considered</p> <p>9 perjury?</p> <p>10 A. Yes.</p> <p>11 Q. So you will you agree to tell the</p> <p>12 truth today?</p> <p>13 A. Yes.</p> <p>14 Q. And will you agree to provide</p> <p>15 accurate testimony today?</p> <p>16 A. Yes.</p> <p>17 Q. To that end, is there anything today</p> <p>18 preventing you from providing complete, accurate</p> <p>19 and truthful testimony?</p> <p>20 A. No.</p> <p>21 Q. Do you have any questions, sir,</p> <p>22 about these instructions?</p> <p>23 A. No.</p> <p>24 Q. Thank you.</p> <p>25 Mr. Crook, what did you do to</p>	<p style="text-align: right;">Page 13</p> <p>1 Crook</p> <p>2 Did you talk to anyone else other</p> <p>3 than your counsel for preparing for this</p> <p>4 deposition?</p> <p>5 A. No.</p> <p>6 Q. Are you aware that depositions have</p> <p>7 been taken in this case of federal officials,</p> <p>8 including Major Thane Startzel, Eileen</p> <p>9 Williamson, Eric Stash, Colonel John Henderson</p> <p>10 and General Scott Spellmon?</p> <p>11 A. I'm aware that some other</p> <p>12 depositions have been taken. I'm not -- I wasn't</p> <p>13 aware of all of the depositions that you just</p> <p>14 listed, just a couple of them.</p> <p>15 Q. Which ones were you aware of, sir?</p> <p>16 A. General Spellmon and Colonel</p> <p>17 Henderson, and I'm not sure if I was aware of any</p> <p>18 of the other ones. I knew that there were other</p> <p>19 depositions but just not specifically.</p> <p>20 Q. Did your counsel provide you the</p> <p>21 transcripts of those depositions?</p> <p>22 A. No.</p> <p>23 Q. Did you view any videotaped excerpts</p> <p>24 or in full portions of those depositions?</p> <p>25 A. No.</p>

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<p style="text-align: right;">Page 14</p> <p style="text-align: center;">Crook</p> <p>1 Q. Did you review any documents, sir,</p> <p>2 prior to today's deposition?</p> <p>3 A. There were documents shown to me</p> <p>4 during prep.</p> <p>5 Q. And which documents?</p> <p>6 MS. ZILLOLI: Objection.</p> <p>7 Attorney/client privilege work product. I'm</p> <p>8 glowing to instruct the witness not to answer.</p> <p>9 Q. Other than documents prepared or</p> <p>10 provided to you by your counsel, which documents</p> <p>11 did you review?</p> <p>12 A. Only documents that were provided by</p> <p>13 counsel.</p> <p>14 Q. And did you review those documents</p> <p>15 on your own prior to a call or did you review</p> <p>16 them concurrently with your meetings or video</p> <p>17 link with counsel?</p> <p>18 A. Reviewed them during the prep</p> <p>19 sessions with counsel.</p> <p>20 Q. Okay.</p> <p>21 So how many hours total would you</p> <p>22 say that you've prepared with counsel or apart</p> <p>23 for your deposition today?</p> <p>24 A. I'd say eight to nine hours.</p> <p>25</p>	<p style="text-align: right;">Page 16</p> <p style="text-align: center;">Crook</p> <p>1 A. It was an email exchange with an</p> <p>2 official at the White House from December 2016.</p> <p>3 Q. Can you describe the email, please.</p> <p>4 A. I mean, it would speak for itself,</p> <p>5 but, as I recall, it was from Brian Deese,</p> <p>6 Counsel to the President, to me and it said that,</p> <p>7 I mean, again, it would speak for itself; but it</p> <p>8 was stating that the decision on what to do about</p> <p>9 an easement for Dakota's access pipeline was the</p> <p>10 assistant secretary's decision.</p> <p>11 Q. The assistant secretary, who are you</p> <p>12 referring to?</p> <p>13 A. I'm sorry. The assistant secretary</p> <p>14 of the Army for Civil Works.</p> <p>15 Q. Would you be referring to Miss</p> <p>16 Jo-ellen Darcy?</p> <p>17 A. Yes.</p> <p>18 Q. And the memo that you mentioned,</p> <p>19 what did that pertain to?</p> <p>20 MS. ZILLOLI: Objection. The memo</p> <p>21 contains deliberative process privilege. We have</p> <p>22 noted it on our privilege log.</p> <p>23 MR. SEBY: Thank you.</p> <p>24 Q. Mr. Crook, are you aware of the case</p> <p>25</p>
<p style="text-align: right;">Page 15</p> <p style="text-align: center;">Crook</p> <p>1 Q. Thank you.</p> <p>2 Have you done any independent</p> <p>3 research about the issues in this case?</p> <p>4 A. No.</p> <p>5 Q. Did you do any review of any prior</p> <p>6 emails or information from your records?</p> <p>7 A. I, I, I looked for documents that</p> <p>8 might be responsive or relevant to the case to</p> <p>9 provide to attorneys, but that was it.</p> <p>10 Q. And when did you do that?</p> <p>11 A. I believe like two weeks ago, and I</p> <p>12 guess I did a search several months ago, maybe in</p> <p>13 December.</p> <p>14 Q. What kind of search?</p> <p>15 A. I just looked to see if I happened</p> <p>16 to have any physical documents at home.</p> <p>17 Q. And did you find any?</p> <p>18 A. I found two documents that I shared</p> <p>19 with our attorneys.</p> <p>20 Q. What were those documents?</p> <p>21 A. One was a printout of an email and</p> <p>22 one was a memo.</p> <p>23 Q. What was the email involved? What</p> <p>24 did the email involve?</p> <p>25</p>	<p style="text-align: right;">Page 17</p> <p style="text-align: center;">Crook</p> <p>1 that brings you here for your deposition today,</p> <p>2 the State of North Dakota versus the United</p> <p>3 States?</p> <p>4 A. Yes, I'm aware of the case.</p> <p>5 Q. Okay.</p> <p>6 The case involves North Dakota's</p> <p>7 claims against the United States under the</p> <p>8 Federal Tort Claims Act involving \$38 million in</p> <p>9 damages that North Dakota seeks to recover as a</p> <p>10 result of the Corps and other federal officials</p> <p>11 and agencies actions associated with protests</p> <p>12 against the Dakota access pipeline.</p> <p>13 Do you understand that, sir?</p> <p>14 A. I didn't know all the details that</p> <p>15 you just went through, but I knew that the state</p> <p>16 was suing the federal government related to the</p> <p>17 Dakota access pipeline and protests.</p> <p>18 Q. Are you aware that the United States</p> <p>19 filed a motion to dismiss the case against the</p> <p>20 State of North Dakota and that the United States</p> <p>21 District Court for the District of North Dakota</p> <p>22 denied that motion?</p> <p>23 A. I am generally aware of that, yes.</p> <p>24 Q. Have you read any of the pleadings</p> <p>25</p>

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2 involved in that matter?

3 A. No, I haven't actually.

4 Q. Are you aware that the United States

5 sought a motion for partial summary judgment

6 against the State of North Dakota and the U.S.

7 District Court for the District of North Dakota

8 denied that motion?

9 A. I was not aware of that. I'm not

10 aware of that.

11 Q. Are you aware that the United States

12 withheld access for discovery beyond officials

13 from the United States Army Corps of Engineers

14 and that as a result the State of North Dakota

15 sought a motion to compel discovery against other

16 agencies of the United States Government, and

17 that motion was granted.

18 Are you aware of that, sir?

19 A. I'm only generally aware that there

20 was some litigation over the scope of discovery

21 but not the specifics.

22 Q. In the context of your awareness,

23 were you aware that the United States was denied

24 its efforts to limit discovery?

25 A. I'm just aware that, that some

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2 additional discovery was allowed. Like I don't

3 know the details.

4 Q. Okay.

5 Mr. Crook, I'd like to ask you some

6 questions about your background, please.

7 Where are you from, sir?

8 A. Texas.

9 Q. Great big state.

10 Where in Texas?

11 A. The city is called Plano. It's just

12 North of Dallas.

13 Q. Sure, okay.

14 And did you grew up there?

15 A. Yes.

16 Q. You went through high school there?

17 A. Yes.

18 Q. And did you stay in Texas for

19 college, university?

20 A. Yes, I did.

21 Q. Where did you go to university?

22 A. University of Texas in Austin.

23 Q. And beyond a bachelor's degree, did

24 you obtain any other degrees?

25 A. Yes, I did.

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2 Q. And what would those be, sir?

3 A. A masters in public affairs and a JD

4 from law school.

5 Q. And where did you obtain those

6 degrees?

7 A. Also at the University of Texas.

8 Q. Both of them?

9 A. Yes, the masters is from, it's

10 called the LBJ School of Public Affairs, and then

11 the law degree was from University of Texas Law

12 School.

13 Q. Okay.

14 And when did you graduate -- which

15 of those degrees was the last that you obtained?

16 A. So the law and the masters were a

17 joint degree, and I received my degree in 1999.

18 Q. Your Juris Doctorate degree?

19 A. Yes.

20 Q. Thank you.

21 Any additional education beyond

22 those two degrees?

23 A. No.

24 Q. Okay. That's plenty, isn't it?

25 How about, Mr. Crook, your

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2 professional history after you graduated with

3 those degrees?

4 A. I clerked for a year for the Texas

5 Supreme Court, and then I was at a law firm here

6 in Washington, D.C. for I believe nine years.

7 Q. Which firm was that?

8 A. It was called Wilmer, Cutler and

9 Pkckering and now it's called Wilmer, Hale. It

10 changed to Wilmer, Hale while I was there.

11 Q. And then after your period of time

12 at Wilmer, Cutler, Pickering, what did you do?

13 A. I worked for the 2008 Barack Obama

14 campaign for President.

15 Q. In what capacity were you part of

16 that campaign?

17 A. I was counsel in North Carolina and

18 was in charge of voter protection.

19 Q. And did you that for how long, sir?

20 A. Like four months.

21 Q. And then if you keep carrying

22 forward in your history, what did you do after

23 that?

24 A. Then in the Obama administration, my

25 next role was at the office of presidential

19:21-20:4,  
21:7-14,  
22:10-13  
401-402

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<p style="text-align: right;">Page 22</p> <p>Crook</p> <p>1 personnel where I was a vetting attorney.</p> <p>2 Q. You were a vetting attorney?</p> <p>3 A. Yes. So you vet new or potential</p> <p>4 political appointees in the administration.</p> <p>5 Q. And how long did you have that</p> <p>6 position?</p> <p>7 A. Like five or six months, I believe.</p> <p>8 Q. Okay.</p> <p>9 And then after that period of time?</p> <p>10 A. Then I was counsel to the chairman</p> <p>11 and chief of staff at the Federal Maritime</p> <p>12 Commission.</p> <p>13 Q. Okay.</p> <p>14 And what did you do there?</p> <p>15 A. I helped manage the chairman's role</p> <p>16 as managing the agency and also served as his</p> <p>17 counsel.</p> <p>18 Q. Okay.</p> <p>19 And what period of time did you have</p> <p>20 that position?</p> <p>21 A. I believe I started in January 2010</p> <p>22 until June of 2012.</p> <p>23 Q. And then after June of 2012, what</p> <p>24 did you do, Mr. Crook?</p> <p>25</p>	<p style="text-align: right;">Page 24</p> <p>Crook</p> <p>1 Q. Would you -- that brings us to the</p> <p>2 question of your involvement in the Army Corps of</p> <p>3 Engineers involvement in the Dakota Access</p> <p>4 Pipeline permitting process and protests.</p> <p>5 So I want to ask you about your, if</p> <p>6 you would, please describe your position with the</p> <p>7 Corps with respect to the protests against the</p> <p>8 Dakota Access Pipeline for the period of time of</p> <p>9 March, approximately March 2016, to the time in</p> <p>10 which you left the Obama Administration on</p> <p>11 January 20th of 2017.</p> <p>12 Can you -- would you please describe</p> <p>13 the time in which you first became involved in</p> <p>14 issues surrounding the Dakota Access Pipeline.</p> <p>15 A. I believe the first involvement or</p> <p>16 that it came to my knowledge was when the chief</p> <p>17 of the Standing Rock Sioux Tribe met with me in</p> <p>18 the Pentagon in February or March 2016.</p> <p>19 Q. And did you seek the meeting or did</p> <p>20 he seek the meeting?</p> <p>21 A. The tribe sought the meeting.</p> <p>22 Q. Okay.</p> <p>23 And was your office, sir, when you</p> <p>24 were principal deputy secretary of the Army for</p> <p>25</p>
<p style="text-align: right;">Page 23</p> <p>Crook</p> <p>1 A. I was deputy chief of staff at the</p> <p>2 White House Council on Environmental Quality.</p> <p>3 Q. And how long did you serve in that</p> <p>4 position?</p> <p>5 A. I served in that position from</p> <p>6 June 2012 until I believe August 2015. Also</p> <p>7 during part of that period, I was acting general</p> <p>8 counsel of the Council on Environmental Quality.</p> <p>9 Q. And both of those roles that you</p> <p>10 served at the Seaview, they both went through</p> <p>11 August of 2015.</p> <p>12 A. Yes, I believe it's August. I'm</p> <p>13 sorry.</p> <p>14 Q. Okay.</p> <p>15 A. August 2015, yes, that's right.</p> <p>16 Q. Okay.</p> <p>17 And then after that, Mr. Crook, what</p> <p>18 did you do?</p> <p>19 A. Then I was principal deputy</p> <p>20 assistant secretary of the Army for Civil Works.</p> <p>21 Q. Okay.</p> <p>22 And you stayed there through the end</p> <p>23 of the Obama Administration?</p> <p>24 A. Right, until January 20, 2017.</p> <p>25</p>	<p style="text-align: right;">Page 25</p> <p>Crook</p> <p>1 Civil Works, was your office located in the</p> <p>2 Pentagon?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 And this meeting that you're telling</p> <p>6 me about in February of 2016, that was your first</p> <p>7 involvement with the Dakota Access Pipeline, any</p> <p>8 issue related to the Dakota Access Pipeline?</p> <p>9 A. I believe that was my first</p> <p>10 awareness of the pipeline and the issues.</p> <p>11 Q. Okay.</p> <p>12 And what was the nature of the</p> <p>13 meeting that you referenced with the chairman of</p> <p>14 the Standing Rock Sioux Tribe?</p> <p>15 A. At the time, there was a draft,</p> <p>16 environmental assessment that had been issued by</p> <p>17 the Omaha District of the Army Corps of</p> <p>18 Engineers, and the tribe and its counsel took</p> <p>19 issue with some of the things that were in the</p> <p>20 environmental assessment.</p> <p>21 Q. And so was the tribe counsel's</p> <p>22 present in the meeting that you were telling me</p> <p>23 about?</p> <p>24 A. Yes.</p> <p>25</p>



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ND OBJ.:  
Hearsay

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Crook

1 Q. And what was that individual or  
2 individuals' name?  
3  
4 A. I, actually, I can't remember his  
5 name right now.  
6 Q. Was it --  
7 A. There may have been two counsel and  
8 I just, I just -- I don't remember their names.  
9 Q. William Perry?  
10 A. Yes, that is one of them.  
11 Q. Do you recall the other one now?  
12 A. I don't actually. Sorry.  
13 Q. Okay.  
14 What was the ask of the tribe when  
15 they met with you?  
16 A. They didn't want the pipeline to be  
17 permitted to cross Lake Oahe at the location that  
18 the draft EA was analyzing proposing for it to  
19 cross.  
20 The alternative crossing area was  
21 just north of their reservation, and they didn't  
22 want it to cross the river there.  
23 Q. Okay.  
24 If I understood your earlier  
25 response, the EA had already been finalized and

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Crook

1 issued; is that correct?  
2  
3 A. No, I believe that just at that time  
4 a draft EA had been issued, and I don't think  
5 that the final EA had come out yet, nor had the  
6 permits been granted at that time.  
7 Q. And so what was the ask in that  
8 context?  
9 A. That the Corps address the issues  
10 that the tribe raised that they had with the EA.  
11 Q. Okay.  
12 Who was present with the group that  
13 you met other than the chairman and the two  
14 counsel that you mentioned? Was there anyone  
15 else present?  
16 A. There was other staff for the  
17 assistant secretary of the Army for Civil Works.  
18 Q. And who are they?  
19 A. I don't recall exactly who all was  
20 there, but I believe Chip Klein, who was both  
21 regulatory and tribal staff for the assistant  
22 secretary, and I'm just not sure who else.  
23 There may have been other staff from  
24 the assistant secretary office there but I just  
25 don't recall.

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Crook

1 Q. Was the assistant secretary present?  
2 A. No.  
3 Q. Was there anyone present from other  
4 federal agencies?  
5 A. No.  
6 Q. Okay.  
7 Were there any other tribes present?  
8 A. No.  
9 Q. Okay.  
10 And was that the only time you met  
11 with the Standing Rock Sioux Tribe?  
12 A. No.  
13 Q. There would be how many more times?  
14 A. I met with Chairman Archambault  
15 probably two or three other times.  
16 Q. And with respect to the conclusion  
17 of that meeting, did you make any commitments or  
18 promises to the attendees that requested the  
19 meeting with you?  
20 A. No, not that I recall.  
21 Q. How did the meeting end?  
22 A. They expressed their concerns about  
23 the EA. I can't recall if they raised other  
24 issues that were unrelated to the Dakota Access  
25

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Crook

1 Pipeline and, you know, I probably thanked them  
2 for, you know, sharing their concerns but didn't  
3 make any commitments that I recall.  
4 Q. Okay.  
5 Did you promise to provide them with  
6 any follow-up or evaluation to which you would  
7 follow-up with them?  
8 A. No, I don't recall promising any  
9 follow-up with them.  
10 Q. Okay.  
11 So you were telling me that as the  
12 first effort to respond to the question about  
13 your role and position with the Corps concerning  
14 issues regarding the Dakota Access Pipeline, and  
15 I asked about the time frame of March 2016, and I  
16 appreciate you telling me about this meeting,  
17 which occurred prior to that.  
18 So if you would continue to explain  
19 your involvement in the DAPL process carrying  
20 forward from February, the meeting you mentioned.  
21 A. I think the next time that the  
22 pipeline was on my radar was probably in the  
23 summer of 2016.  
24 Q. And how was that so?  
25



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ND OBJECTION:  
Hearsay;  
Foundation

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1 Crook

2 A. We began hearing about concerns

3 about the pipeline that were being raised, in

4 addition to the tribe, by people along this

5 route, and I believe in Iowa and some of the

6 other states that were along its path.

7 Q. By people along its path, who are

8 you referring to? What type of people?

9 A. Well, generally, what I heard was

10 secondhand. I heard that, yeah, the time

11 Secretary Vilsack from the Department of

12 Agriculture, who was former governor of Iowa, I

13 had heard that he was hearing concerns raised by

14 people in Iowa about the pipeline.

15 Q. How did those -- how were those

16 relevant to the Corps?

17 A. Because the Corps was responsible

18 for permitting the pipeline crossing of the

19 Missouri River, Lake Oahe, and the Corps also for

20 the permit to go forward was required to grant an

21 easement across the lake.

22 Q. Okay.

23 The geographic location you're

24 describing is in the State of North Dakota, isn't

25 it?

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1 Crook

2 A. Yes, that particular crossing is in

3 North Dakota.

4 Q. So how is that germane to people in

5 Iowa expressing opinions about the pipeline?

6 A. That's just, after hearing from the

7 Standing Rock Sioux Tribe in North Dakota, I just

8 recall hearing additional concerns being raised

9 from Iowa, different parts of its route where the

10 Corps also had a permitting role for the crossing

11 of any what's considered waters of the United

12 States where the federal government has

13 jurisdiction.

14 Q. In Iowa?

15 A. Yes.

16 Q. Okay. All right.

17 If you will continue to answer the

18 question about your involvement in DAPL.

19 A. At some point in the summer, and I

20 don't remember the exact month.

21 Q. Summer of 2016?

22 A. Yeah, sorry. Summer of 2016, I

23 spoke to people at the Army Corps of Engineers

24 about the timing of the permitting decisions for

25 the Dakota Access Pipeline.

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1 Crook

2 Q. And who did you speak with?

3 A. I believe I spoke to General

4 Jackson, Ed Jackson, the deputy commanding

5 general for civil works of the Army Corps of

6 Engineers.

7 Q. And who else?

8 A. I recall there was a conference

9 call, and I believe that it included General

10 Scott Spellmon, who was then northwest division

11 commander for the Army Corps of Engineers, and

12 Colonel John Henderson, who was district

13 commander for the Omaha District of the Army

14 Corps of Engineers.

15 There may have been other people on

16 the call. I just don't recall today.

17 Q. And what was the topic of that

18 discussion?

19 A. The topic was that the permitting

20 decision was their decision, but I requested that

21 they time the permitting decision so that there

22 was one announcement of the decision and not a

23 series spreading out over time.

24 Q. And why was that?

25 A. Because I believed that that was the

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1 Crook

2 best way to avoid building controversy and

3 protests over the pipeline.

4 Q. Protests where?

5 A. At that time, I didn't know

6 specifically where, but I was generally worried

7 about any place along its path, whether it be

8 North Dakota or Iowa.

9 Q. What caused you to have those

10 concerns in the summer of 2016?

11 A. I've been hearing that there was --

12 it was growing controversial in both North Dakota

13 and Iowa.

14 Q. And who -- where were you hearing

15 that from?

16 A. I heard it from friends of mine who

17 were in the White House, and I don't know if

18 there were press reports about it at the time as

19 well.

20 Q. Which friends in the White House did

21 you hear that from?

22 A. I believe I first started hearing

23 about it from -- his name is Rohan Patel. He was

24 in intergovernmental affairs in the White House.

25 Q. And what did he tell you?

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**ND OBJ.:**  
Hearsay;  
Speculation

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1 Crook

2 A. I believe he had formally worked for

3 Secretary Vilsack, and I believe he may have been

4 the one who relayed the concerns in Iowa that

5 Secretary Vilsack was hearing.

6 Q. How about your concerns that you

7 referenced relative to North Dakota, where did

8 you hear those from?

9 A. Yeah, I first heard the concerns

10 from the tribe itself. I don't recall if in the

11 summer there was additional follow-up from the

12 tribe. I don't believe there was a meeting.

13 There may have been.

14 At some point after the meeting

15 there may have been some written letters from the

16 tribe about the issue.

17 Q. And you referenced that as occurring

18 in the summer of 2017.

19 Are you recalling now with any

20 better specificity when in the summer?

21 A. I can't recall if it's July or

22 August.

23 Q. Okay.

24 And with respect to your concern

25 about protest gathering, if a decision was made,

Page 35

1 Crook

2 were you hearing threats or suggestions that a

3 protest would occur in North Dakota?

4 A. I don't believe at that time, at the

5 time we were talking about the permitting

6 decision that I was -- I don't recall hearing

7 threats about a protest at the time. I was more

8 at that time just concerned about the

9 controversy, general controversy around it.

10 Q. No one was threatening protest, to

11 your knowledge, at that time?

12 A. Not that I recall?

13 Q. Would you continue with your

14 explanation of your role and participation.

15 We're up to the summer of 2016.

16 A. Okay.

17 After that call, at some point the

18 Corps published its final environmental

19 assessments for the various crossings of the

20 pipeline over where the Corps had, you know,

21 jurisdiction for permits and issued the permits

22 for the pipeline to proceed.

23 Q. Okay. And?

24 A. And then after that, then I heard

25 that protests had begun in North Dakota.

**ND OBJ.:**  
After "... a protest at  
the time." - Non-  
Responsive.

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1 Crook

2 Q. And if you could elaborate on what

3 you heard about that point, protests had begun.

4 A. At that time, and I believe this was

5 in August, I had heard that there was some

6 relatively small protests on the northern part of

7 the Standing Rock Sioux Reservation, and that's

8 all I heard at the time.

9 Q. Okay.

10 With respect to the agency action

11 that you just referenced, the issuance of a final

12 environmental assessment and permits to proceed

13 with the pipeline, were you involved in those

14 decisions?

15 A. As I said, I had a discussion about

16 the timing of the decisions but believed that the

17 decision on the merits of it was up to the Corps

18 of Engineers and specifically the district and

19 the division commanders.

20 Q. Okay.

21 So when you heard about the final EA

22 being issued, you were advised that the Omaha

23 District and the Northwest Division had made a

24 decision?

25 A. Yes.

**ND OBJ.:**  
Hearsay

**36:10-  
19,  
37:24-  
38:9,  
40:10-  
18  
401-  
402**

**ND OBJ.:**  
Relevance

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1 Crook

2 Q. You were not or were you advised

3 prior to the decision being made by those

4 individuals what they were proposing to do?

5 A. Yes, I believe so.

6 Q. And did you have any response to

7 that proposal?

8 A. No, only on the -- only that the --

9 on the timing of the announcement.

10 Q. So is it your testimony, Mr. Crook,

11 that you did not influence the merits decision in

12 any way other than to influence the timing of

13 that decision?

14 A. It's my testimony that I did not --

15 I don't recall expressing a view on the merits of

16 the permitting decision to the Corps of Engineers

17 chain of command.

18 Q. Okay.

19 Did you express an opinion on

20 anything else?

21 A. As I said, I expressed an opinion on

22 that the timing of the decision happened all at

23 once.

24 Q. And what was your opinion expressed

25 as to the timing? Did you have a position that

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<p style="text-align: right;">Page 38</p> <p style="text-align: center;">Crook</p> <p>1 differed than the proposed timing from the</p> <p>2 division and district commanders?</p> <p>3 A. No, I just -- I just wanted it to be</p> <p>4 one announcement, and I wanted to be able to have</p> <p>5 notice of the announcement beforehand so I could</p> <p>6 advise other people in the administration that it</p> <p>7 was coming and that likely news reports were</p> <p>8 likely coming about it.</p> <p>9 Q. And so did you -- your position was</p> <p>10 expressed to whom?</p> <p>11 A. As I recall, it was expressed to</p> <p>12 General Jackson, General Spellmon and Colonel</p> <p>13 Henderson. There may have been others, too.</p> <p>14 Q. Did you express that to anyone other</p> <p>15 than General Jackson in the Corps of Engineers</p> <p>16 leadership or the Department of Army?</p> <p>17 A. I don't recall specifically. I may</p> <p>18 have expressed it with the director of civil</p> <p>19 works, and I talked about the timing and the need</p> <p>20 for advanced notice with Assistant Secretary</p> <p>21 Darcy and other staff in the assistant</p> <p>22 secretary's office.</p> <p>23 Q. Okay.</p> <p>24 And your opinion, did it differ from</p> <p>25</p>	<p style="text-align: right;">Page 40</p> <p style="text-align: center;">Crook</p> <p>1 opinion?</p> <p>2 A. I believe she agreed with me.</p> <p>3 Q. How about Major General Jackson, did</p> <p>4 he agree with you?</p> <p>5 A. I don't know that he expressed</p> <p>6 that -- his own opinion, but I believe that he</p> <p>7 understood why I was asking for it and --</p> <p>8 Q. Okay.</p> <p>9 And then with respect to that</p> <p>10 decision on timing or the merits, did you discuss</p> <p>11 that matter with the White House?</p> <p>12 A. Yes.</p> <p>13 Q. And who did you discuss that with?</p> <p>14 A. I believe at some point I discussed</p> <p>15 it with Rohan Patel in intergovernmental affairs</p> <p>16 and, also, with a special assistant to Brian</p> <p>17 Deese, Counsel to the President.</p> <p>18 Q. And that individual's name?</p> <p>19 A. I'm forgetting his name right now.</p> <p>20 Q. Okay.</p> <p>21 Did you have an existing friendly or</p> <p>22 professional relationship with either of those</p> <p>23 individuals?</p> <p>24 A. Yes.</p> <p>25</p>
<p style="text-align: right;">Page 39</p> <p style="text-align: center;">Crook</p> <p>1 what Mr. or General Spellmon or Colonel Henderson</p> <p>2 were intending to do?</p> <p>3 A. No, I didn't really have an opinion</p> <p>4 on the merits of it at that time.</p> <p>5 Q. My question wasn't regarding the</p> <p>6 merits. It was the timing.</p> <p>7 A. Oh, no, I don't think I had an issue</p> <p>8 with the timing because they did, as I recall, as</p> <p>9 far as the permits at least, they were all</p> <p>10 announced at the same time.</p> <p>11 Q. So in terms of your opinion, you</p> <p>12 were -- you were happy with what was done then</p> <p>13 and that comported with your opinion?</p> <p>14 A. The timing was consistent with the</p> <p>15 discussions I had with them, yes.</p> <p>16 Q. And so you gave them an opinion and,</p> <p>17 to your knowledge, they followed it?</p> <p>18 A. They agreed with what we discussed,</p> <p>19 yes, and acted consistently with it.</p> <p>20 Q. Okay.</p> <p>21 Was your opinion first shared with</p> <p>22 Assistant Secretary Darcy?</p> <p>23 A. Yes, I did share it with her first.</p> <p>24 Q. And how did she feel about your</p> <p>25</p>	<p style="text-align: right;">Page 41</p> <p style="text-align: center;">Crook</p> <p>1 Q. Okay.</p> <p>2 Was it one of your job</p> <p>3 responsibilities to be a liaison to the White</p> <p>4 House?</p> <p>5 A. It was to inform them of anything</p> <p>6 noteworthy or controversial that was happening</p> <p>7 with the Army Corps of Engineer Civil Works</p> <p>8 program.</p> <p>9 Q. And in conducting that effort, those</p> <p>10 efforts, was that an official part of your job</p> <p>11 description?</p> <p>12 A. I don't recall the specifics of my</p> <p>13 precise written job description, but I did see it</p> <p>14 as one of my responsibilities.</p> <p>15 Q. Okay.</p> <p>16 And did you conduct that work with</p> <p>17 the knowledge of Miss Darcy?</p> <p>18 A. Yes, generally, I did.</p> <p>19 Q. Okay.</p> <p>20 Did the other people in the Corps of</p> <p>21 Engineers that you worked with, were they aware</p> <p>22 that one of your responsibilities to do what you</p> <p>23 just mentioned?</p> <p>24 MS. ZILLOLI: Objection.</p> <p>25</p>

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1 Crook

2 Speculation.

3 Q. I'm asking whether you know that.

4 A. I would make them aware of some

5 discussions or things being shared with the White

6 House generally. I don't recall specifically,

7 you know, which conversations at that time they

8 were specifically aware of versus just generally

9 that the White House was being kept informed of

10 significant things.

11 Q. Sure. Okay.

12 Was your job responsibility to also

13 be a liaison to other federal agencies?

14 A. Yes, I believe the office of the

15 assistant secretary generally is responsible for

16 engagement between the Corps of Engineers and

17 other federal agencies.

18 Q. And what other federal agencies in

19 practice with such engagement -- did such

20 engagement involve?

21 A. Do you mean generally or with

22 respect to the Dakota Access Pipeline?

23 Q. The latter, with respect to the

24 Dakota Access Pipeline.

25 A. The Department of the Interior and

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1 Crook

2 Department of Justice were probably the two main

3 agencies that I dealt with during that time

4 regarding the Dakota Access Pipeline.

5 Q. Okay.

6 And when did you start speaking with

7 those agencies regarding the Dakota Access

8 Pipeline?

9 A. It was in shortly after Labor Day in

10 September 2016 Assistant Secretary Darcy and I

11 went to a meeting at the interior department

12 about it.

13 Q. And who did you meet with?

14 A. John Cruden, the head of environment

15 natural resource -- assistant attorney general

16 for environment and natural resources; his

17 deputy, Sam Hirsch, from the interior department.

18 I recall that Tommy Boudreau, the chief of staff

19 was there. I believe that the solicitor of the

20 Department of the Interior, Hillary Tompkins was

21 there. There may have been other attorneys on

22 her staff there.

23 I believe that there was a detailee

24 from the Corps to the Department of Interior

25 Solicitor's Office who was there as well.

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1 Crook

2 I don't recall if others were there

3 but I believe that all of those were there.

4 Q. Who was the individual from the

5 Corps that was present at that meeting?

6 A. And, again, she was at that time

7 serving as a detailee to the interior department,

8 so she really wasn't wearing her Corps of

9 Engineer's hat, and I am blanking on her name

10 right now.

11 Q. What's a detailee?

12 A. I'm sorry. A detailee is when one

13 federal agency shares for a temporary period one

14 of their employees with another federal agency.

15 Q. And was that detailee involved

16 specifically on the DAPL issue?

17 A. She did engage on the DAPL issue,

18 yes.

19 Q. Okay.

20 Is that Miss Zilloli?

21 A. No.

22 Q. Okay.

23 Did you work with Miss Zilloli at

24 the time?

25 A. Not that I recall specifically. We

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1 Crook

2 may have been in group meetings on a couple of

3 occasions.

4 Q. At what time period were those

5 meetings?

6 A. There were meetings in the fall of

7 2016.

8 Q. Okay.

9 Were you also at that time meeting

10 with individuals from the executive office of the

11 President?

12 A. Yes.

13 Q. And who?

14 A. Again, you're specifically regarding

15 the Dakota Access Pipeline?

16 Q. Yes.

17 A. I met periodically with Dan Utech.

18 A couple of times with Brian Deese.

19 Q. The counsel to the President?

20 A. Yes.

21 Q. And I'm sorry.

22 Mr. Utech is who?

23 A. Dan Utech, I believe at the time he

24 was in the domestic policy council and was

25 responsible for climate and energy policy there.

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<p style="text-align: right;">Page 46</p> <p style="text-align: center;">Crook</p> <p>1 Q. Okay.</p> <p>2 And who else was a part of your</p> <p>3 meetings with the executive office of the</p> <p>4 President?</p> <p>5 A. Generally, there was staff from the</p> <p>6 White House counsel's office.</p> <p>7 Q. And who else?</p> <p>8 A. Depending on the time, there may</p> <p>9 have been other staff from the domestic policy</p> <p>10 council.</p> <p>11 Q. Who would those individuals be?</p> <p>12 A. I'm forgetting the name of the chief</p> <p>13 of staff of the domestic policy council, but she</p> <p>14 was in some meetings but more -- those were more</p> <p>15 generally on tribal engagement rather than</p> <p>16 specifically on Dakota Access Pipeline generally.</p> <p>17 There was also --</p> <p>18 Q. Would you be referring to Miss</p> <p>19 Katherine Ferguson?</p> <p>20 A. Yes, that's right.</p> <p>21 Q. Okay.</p> <p>22 And when did you meet with Miss</p> <p>23 Ferguson? Is that part of -- I apologize.</p> <p>24 I asked you who did you meet with</p> <p>25</p>	<p style="text-align: right;">Page 48</p> <p style="text-align: center;">Crook</p> <p>1 A. And do you mean just physically met</p> <p>2 with or?</p> <p>3 Q. Meet as in this day and age by</p> <p>4 telephone, physically, Zoom, all of those things.</p> <p>5 A. Oh, okay.</p> <p>6 And you said outside of government.</p> <p>7 Q. Outside of the United States</p> <p>8 Government. Any office of the United States</p> <p>9 Government.</p> <p>10 A. I had phone calls and with, at least</p> <p>11 one or two phone calls from the Governor of North</p> <p>12 Dakota and many phone calls with his chief of</p> <p>13 staff.</p> <p>14 Q. Okay.</p> <p>15 Did you ever speak with physically</p> <p>16 or on telephone or email correspondence with Miss</p> <p>17 Jody Gillette?</p> <p>18 A. Ever?</p> <p>19 Q. Yes.</p> <p>20 A. Yes, because she used to work in the</p> <p>21 White House when I was at the council of</p> <p>22 environmental quality.</p> <p>23 Q. And did you meet with her regarding</p> <p>24 the Dakota access issues, meet, correspond,</p> <p>25</p>
<p style="text-align: right;">Page 47</p> <p style="text-align: center;">Crook</p> <p>1 from the executive office of the President, the</p> <p>2 White House, and you were telling me some names</p> <p>3 and I appreciate that.</p> <p>4 But when did you have those</p> <p>5 meetings?</p> <p>6 A. In the fall of and into the winter</p> <p>7 of 2016.</p> <p>8 Q. Okay. All right.</p> <p>9 And not to interrupt you, but you</p> <p>10 left off with Miss Ferguson.</p> <p>11 After that?</p> <p>12 A. There was a White House tribal</p> <p>13 liaison, first name is Karen, I believe, and I'm</p> <p>14 forgetting her last name.</p> <p>15 Q. Okay.</p> <p>16 How about outside of the government</p> <p>17 of the United States, who did you meet with</p> <p>18 during those time periods concerning the Dakota</p> <p>19 Access Pipeline?</p> <p>20 A. As I said, I met with the leadership</p> <p>21 for the Standing Rock Sioux Tribe and their</p> <p>22 counsel. I met with leadership of the energy</p> <p>23 transfer partners.</p> <p>24 Q. Okay.</p> <p>25</p>	<p style="text-align: right;">Page 49</p> <p style="text-align: center;">Crook</p> <p>1 communicate, meet, discuss, email?</p> <p>2 A. I don't recall any because during</p> <p>3 the Dakota Access Pipeline I believe she was no</p> <p>4 longer at the White House. I don't recall having</p> <p>5 any personal or telephonic discussions with her</p> <p>6 about the pipeline. She may have sent an email</p> <p>7 or written correspondence but I don't recall</p> <p>8 specifically.</p> <p>9 Q. So just to understand what you said,</p> <p>10 do you or do you not or is your testimony that</p> <p>11 you had no communications with Miss Gillette</p> <p>12 regarding the Dakota Access Pipeline?</p> <p>13 A. It's that I don't recall specific</p> <p>14 communications with her regarding the Dakota</p> <p>15 Access Pipeline. I was generally aware that she</p> <p>16 was advocating with regard to tribal issues and</p> <p>17 the pipeline.</p> <p>18 Q. And specifically what?</p> <p>19 A. That she was opposed to the pipeline</p> <p>20 and supporting the tribes.</p> <p>21 Q. Supporting the tribes in what, their</p> <p>22 opposition to the pipeline?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. Okay.</p> <p>25</p>

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49:9,  
49:19-2  
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50:2-14  
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**ND OBJECTION:**  
**Relevance**

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1 And after Miss Gillette left the

2 employ of the United States Government, the

3 executive office of the President, did you speak

4 with her outside or in her capacity as a lobbyist

5 or a government affairs consultant?

6 A. I don't recall speaking with her,

7 no.

8 Q. Are you aware of whether Miss

9 Gillette is the sister of Chairman Archambault of

10 the Standing Rock Sioux Tribe?

11 A. I think I knew that they were

12 related. I didn't recall -- I don't recall the

13 specific relationship.

14 Q. Who is the secretary of the Army at

15 the time of your employ with the Corps?

16 A. There was an acting secretary and

17 then Eric Fanning was confirmed while I was there

18 and during this period was the secretary.

19 Q. During the August --

20 A. 2016. I don't remember the exact

21 date of his confirmation.

22 Q. Okay.

23 Did you interact in any way with the

24 secretary of the Army?

25

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1 A. Yes.

2 Q. In what capacity?

3 A. He was my boss.

4 Q. And what does that mean in terms of

5 my question?

6 A. I would inform him or his staff of

7 anything significant that was happening with the

8 Army Corps of Engineers and, also, would be in

9 just regular weekly meetings with the Army

10 secretary and uniform leadership.

11 Q. Okay.

12 And then with respect to your

13 principal deputy position, you were a principal

14 deputy to whom?

15 A. To the assistant secretary of the

16 Army for Civil Works Jo-Ellen Darcy.

17 Q. And when you took your position, was

18 Miss Darcy in that position as assistant

19 secretary?

20 A. Yes.

21 Q. And had you known or worked with her

22 prior to that position?

23 A. Yes.

24 Q. In what capacity?

25

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1 A. When I was at the White House

2 Council on Environmental Quality, I worked on a

3 lot of the issues that related to the Army Corps

4 Civil Works program.

5 Q. So you worked with Miss Darcy when

6 you were in the Council on Environmental Quality

7 when she was already at the Corps of Engineer as

8 assistant secretary?

9 A. Yes.

10 Q. Okay.

11 Did you -- what was your position at

12 CEQ, was that heavily involved in implementation

13 of the National Environmental Policy Act?

14 A. That was a -- that's one of CEQ's

15 responsibilities and, therefore, one of the

16 things that I worked on, yes.

17 Q. Would you consider yourself to be

18 pretty knowledgeable about NEPA, the statute?

19 A. Yes, I would consider myself fairly

20 knowledgeable about it.

21 Q. How about with respect to the Clean

22 Water Act or otherwise known as the Federal Water

23 Pollution Control Act?

24 A. I have experience with the Clean

25

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1 Water Act as well, yes.

2 Q. How about the Federal Rivers and

3 Harbors Act?

4 A. Yes, I have some experience with

5 that as well.

6 Q. What federal statutes would you say

7 are among your specialized knowledge?

8 A. Some other statutes that I dealt

9 with fairly regularly would be the Stafford Act

10 for Disaster Recovery.

11 I'm not thinking of other ones that

12 I have specific, you know, background or

13 expertise on.

14 Q. Okay.

15 And while you were at the CEQ, Mr.

16 Crook, did you become familiar with the statutes

17 governing the Corps of Engineers?

18 A. I became more familiar with them

19 over time while I was at CEQ.

20 Q. And that was because you were

21 working with and/or advising the Corps in that

22 capacity?

23 A. I was, yes, working with and

24 coordinating with the Corps on some parts of

25



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<p style="text-align: right;">Page 54</p> <p style="text-align: center;">Crook</p> <p>1 their mission at the time that had sort of</p> <p>2 concerned the environmental or disaster recovery</p> <p>3 efforts.</p> <p>4</p> <p>5 Q. When you were at the CEQ, did you</p> <p>6 have any occasion to become aware of or familiar</p> <p>7 with the regulations of the Army Corps of</p> <p>8 Engineers?</p> <p>9 A. I became familiar with some of the</p> <p>10 regulations of the Army Corps of Engineers, as</p> <p>11 well as the CEQ.</p> <p>12 Q. Would those include regulations that</p> <p>13 are located in the code of Federal Regulations at</p> <p>14 Title 36?</p> <p>15 A. At the time, I didn't know they were</p> <p>16 located in Title 36CFR, but, yes, those are some</p> <p>17 of the regulations at the Corps that I gained a</p> <p>18 growing familiarity with.</p> <p>19 Q. While you were at the CEQ?</p> <p>20 A. Yes.</p> <p>21 Q. Prior to your position with the</p> <p>22 Corps?</p> <p>23 A. Yes.</p> <p>24 Q. Did you work on the administration</p> <p>25 of those Title 36 regulations prior to taking</p>	<p style="text-align: right;">Page 56</p> <p style="text-align: center;">Crook</p> <p>1 than I was with the permitting regulations of the</p> <p>2 Corps of Engineers at the time.</p> <p>3</p> <p>4 Q. Less familiar but you were still</p> <p>5 familiar in some degree?</p> <p>6 A. I knew that there were regulations,</p> <p>7 but I didn't know very much about their</p> <p>8 substance.</p> <p>9 Q. Over time did you acquire greater</p> <p>10 knowledge about their substance?</p> <p>11 A. My knowledge did grow. I learned</p> <p>12 some things about them over time, yes.</p> <p>13 Q. And what did you learn and when</p> <p>14 about the Title 36 regulations?</p> <p>15 A. Again, and I don't think I knew or</p> <p>16 know that land use regulations of the Corps are</p> <p>17 at Title 36; but in discussions about the</p> <p>18 pipeline, protests and Omaha's District response,</p> <p>19 you know, I believe sometimes the Corps'</p> <p>20 regulations would come up.</p> <p>21 Q. Did your knowledge, was it based</p> <p>22 exclusively on what other people told you or did</p> <p>23 you take it upon yourself to read those</p> <p>24 regulations?</p> <p>25 A. It was mostly on what other people</p>
<p style="text-align: right;">Page 55</p> <p style="text-align: center;">Crook</p> <p>1 your position at the Corps? Any instance?</p> <p>2 A. I didn't work on the administration</p> <p>3 of them. I might have -- I worked on, sorry. I</p> <p>4 worked on interagency efforts that where -- that</p> <p>5 may have been relevant to those regulations.</p> <p>6</p> <p>7 Q. And what do you mean by that?</p> <p>8 A. So some of the -- one of the</p> <p>9 inter-agencies effort that I worked on was the</p> <p>10 Federal Flood Risk Management Standard for flood</p> <p>11 readiness of disaster and other federal funded</p> <p>12 projects, and I worked with the Corps to that</p> <p>13 clarify that that standard didn't impact the</p> <p>14 Section 404 permitting processes or standard for</p> <p>15 the Corps or Section 408 permitting or other</p> <p>16 permitting roles of the Corps.</p> <p>17 Q. Okay.</p> <p>18 So by the time that you took your</p> <p>19 position at the Corps and in the summer of 2016</p> <p>20 when you were talking with the Corps leadership,</p> <p>21 General Spellmon and Colonel Henderson, you were</p> <p>22 aware of the land management regulations for the</p> <p>23 Corps of Engineers?</p> <p>24 A. I was less familiar with the land</p> <p>25 management regulations of the Corps of Engineers</p>	<p style="text-align: right;">Page 57</p> <p style="text-align: center;">Crook</p> <p>1 told me or written summaries that they may have</p> <p>2 provided to me.</p> <p>3</p> <p>4 Q. Did you read the Title 36</p> <p>5 regulations independently of anyone else telling</p> <p>6 you their opinion as to those regulations?</p> <p>7 A. I've read the -- I don't recall</p> <p>8 specifically reading the Title 36 land management</p> <p>9 regulations independently.</p> <p>10 Q. Okay.</p> <p>11 Ever? Is that your testimony? You</p> <p>12 do not recall ever reading the Title 36</p> <p>13 regulations on your own?</p> <p>14 A. And I don't know if the Corps</p> <p>15 permitting regulations are in Title 36 or not</p> <p>16 because I certainly have read those regulations</p> <p>17 many times, but I don't specifically recall</p> <p>18 reading the land management regulations.</p> <p>19 Q. So help me understand the difference</p> <p>20 between the permitting regulations and the land</p> <p>21 management regulations in your opinion.</p> <p>22 What is the difference between</p> <p>23 those?</p> <p>24 MS. ZILLOLI: Objection to the</p> <p>25 extent it calls for a legal conclusion.</p>



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<p style="text-align: right;">Page 58</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 Q. Mr. Crook --</p> <p>3 A. Go ahead. I'm sorry.</p> <p>4 Q. I apologize.</p> <p>5 My question is based upon the fact</p> <p>6 that I understand you're an attorney, and you</p> <p>7 were the principal deputy assistant secretary of</p> <p>8 the Army for Civil Works.</p> <p>9 The Army Corps of Engineers owns</p> <p>10 land or manages lands associated with water</p> <p>11 projects, and I'm just trying to understand, sir,</p> <p>12 were you familiar with the rules and regulations</p> <p>13 promulgated by the agency for which you were the</p> <p>14 principal deputy assistant secretary for the Army</p> <p>15 of Civil Works?</p> <p>16 A. And I think, as I said, I was less</p> <p>17 familiar at the outset and gained some additional</p> <p>18 familiarity over time from hearing about them</p> <p>19 from others or from written summaries that other</p> <p>20 people provided.</p> <p>21 Q. Okay, and I understand that.</p> <p>22 I'm trying to understand what effort</p> <p>23 did you personally make in understanding those</p> <p>24 regulations firsthand?</p> <p>25 A. I participated in meetings where the</p>	<p style="text-align: right;">Page 60</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 the Army for Civil Works, where does that fit in</p> <p>3 relative to the uniform military aspect of the</p> <p>4 Corps? I want to better understand that.</p> <p>5 Would you explain that to me,</p> <p>6 please.</p> <p>7 A. So the Corps has three different</p> <p>8 primary missions. One is the military program</p> <p>9 side. One is work that it does for other federal</p> <p>10 agencies or governments, and then one is this</p> <p>11 civil works program that's primarily focused on</p> <p>12 domestic civil works infrastructure, and the</p> <p>13 assistant secretary is responsible for policy for</p> <p>14 the civil works part of the Corps' mission.</p> <p>15 Q. Okay.</p> <p>16 Would there be an assistant -- how</p> <p>17 many assistant secretaries are there?</p> <p>18 A. There may be like six to eight. I'm</p> <p>19 not sure of the exact number.</p> <p>20 Q. So Miss Darcy was not the only</p> <p>21 assistant secretary of the Army?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay.</p> <p>24 And you were not the only principal</p> <p>25 deputy to the assistant secretary?</p>
<p style="text-align: right;">Page 59</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 regulations were part of the discussion about</p> <p>3 what the Corps was going to do or could or</p> <p>4 couldn't do, and I believe that there were some</p> <p>5 written summaries of the issues that likely</p> <p>6 referenced the regulations as well.</p> <p>7 Q. So that's another example of other</p> <p>8 people giving you their opinion on those</p> <p>9 regulations.</p> <p>10 But my question continues to be,</p> <p>11 sir, did you ever read them in the first person</p> <p>12 yourself?</p> <p>13 A. I do not recall reading the land</p> <p>14 management regulations specifically, you know,</p> <p>15 separately from any written summaries that I've</p> <p>16 received.</p> <p>17 Q. All right. Thank you.</p> <p>18 Now, I'd like to ask you some</p> <p>19 questions to understand the nature of the Corps</p> <p>20 of Engineers being a part of the Department of</p> <p>21 Army; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 So if there is a secretary of the</p> <p>25 Army and Miss Darcy is the assistant secretary of</p>	<p style="text-align: right;">Page 61</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 A. I was not the only principal deputy</p> <p>3 and an assistant secretary, that's right. There</p> <p>4 were other principal deputies to other assistant</p> <p>5 secretaries.</p> <p>6 Q. Got it.</p> <p>7 And your principal deputy position</p> <p>8 was with exclusively with respect to Miss Darcy</p> <p>9 and the civil works portion of the Corps?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So thank you for that</p> <p>12 explanation.</p> <p>13 With respect to how that is</p> <p>14 organized, who did you -- who was your principal</p> <p>15 report, to whom?</p> <p>16 A. Assistant Secretary Darcy.</p> <p>17 Q. Okay.</p> <p>18 Exclusively or did any of your</p> <p>19 responsibilities include obligations to report to</p> <p>20 any military command?</p> <p>21 A. I didn't have a direct line of</p> <p>22 report to the military command. It was more of a</p> <p>23 coordination role with the military.</p> <p>24 Q. All right.</p> <p>25 And so in that capacity, how was</p>

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1 your relation from a responsibility standpoint to

2 Major General Ed Jackson?

3 A. He was my primary counterpart and

4 point of contact at the Corps of Engineers

5 because he was the deputy in charge of the Corps'

6 civil works program.

7 Q. Yet he was a military member, right?

8 A. Yes.

9 Q. And so who -- was he your boss in

10 any respect?

11 A. No.

12 Q. Okay.

13 And your involvement with him was a

14 matter of required cooperation and involvement;

15 is that fair to say?

16 A. I would say that a large part of my

17 role was working with General Jackson, yes.

18 Q. Okay.

19 And that was in a constructive but

20 not obligatory sense; is that what you're saying?

21 A. I viewed it as both because

22 Assistant Secretary Darcy when I first started on

23 the job said that one of my primary

24 responsibilities was to strengthen cooperation

25

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1 and teamwork between the assistant secretary's

2 office and the Corps of Engineers.

3 Q. And why did she make that

4 observation, strengthen? Was it weak?

5 A. I think before I got there and

6 before General Jackson started, there were some

7 issues and disagreements over a particular

8 regulation that the Corps or the Army had issued.

9 Q. And what regulation would that be?

10 A. It was the definition of waters of

11 the United States that are regulated by the Clean

12 Water Act.

13 Q. Okay.

14 Can you describe the nature of that

15 difference of opinion.

16 A. The Clean Water Act is jointly

17 administered by the Environmental Protection

18 Agency and the Corps of Engineers, and there were

19 disagreements between the agency and between

20 different people at the agencies over how to

21 define the jurisdiction of the Clean Water Act.

22 Q. And did that disagreement stem from

23 a prior administration.

24 A. I would say that the jurisdiction of

25

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1 the Clean Water Act has been an issue -- has been

2 -- that administrators have struggled with since

3 the beginning of the Clean Water Act.

4 Q. The '70s?

5 A. Yes.

6 Q. And if you would just, please, in

7 shorthand reference, what is the difference of

8 opinion that you are observing existed at the

9 time that you came into your position?

10 A. The Corps of Engineers regulatory

11 team wanted to have a more fact specific, less

12 bright line approach to the Clean Water Act

13 following something called the significant nexus

14 standard and EPA and Assistant Secretary Darcy

15 favored a more bright line approach to defining

16 what was jurisdictional.

17 Q. So Assistant Secretary Darcy had a

18 position that was consistent with EPA's and she

19 was asking you to help harmonize the Corps to

20 that position?

21 A. At that time, I was at the White

22 House when the rule was issued and --

23 Q. Are you referring to the rule being

24 issued being the 2015 Waters of the United States

25

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1 definition?

2 A. Yes.

3 Q. Okay.

4 Under the Obama Administration?

5 A. Yes.

6 Q. That Miss Darcy signed that

7 regulation that appeared in the Federal Register;

8 is that correct?

9 A. I believe she did, yes.

10 Q. So when you were hired as principal

11 deputy, one of your responsibilities was to help

12 the Corps get with that program under that

13 regulation?

14 MS. ZILLOLI: Objection. Vague.

15 A. No, I think that the Corps, well,

16 the Corps was implementing the regulation to the

17 extent the courts allowed it. There was written

18 criticism from the Corps that had been shared

19 with Congress that resulted in lengthy hearings

20 that Miss Darcy just participated in.

21 And I think, more generally, she

22 wanted my role to be repairing the relationship

23 between the assistant secretary's office and the

24 Corps in the wake of that, not just specifically

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401-402,  
602, 802

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<p style="text-align: right;">Page 66</p> <p style="text-align: center;">Crook</p> <p>1 on the Clean Water Act but just more general.</p> <p>2 Q. I see. Okay.</p> <p>3 When did Miss Darcy take the</p> <p>4 position --</p> <p>5 A. I believe -- I'm sorry.</p> <p>6 Q. Go ahead.</p> <p>7 A. I believe it was in the fall of</p> <p>8 2009.</p> <p>9 Q. So she had been there for quite</p> <p>10 sometime prior to your arrival?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 What was your predecessor's name?</p> <p>14 A. There was a vacancy for a while, and</p> <p>15 then before that it was Marie Teres Dominguez.</p> <p>16 Q. And why did Miss Dominguez leave?</p> <p>17 A. She moved over to be in charge of</p> <p>18 the pipeline and hazardous materials, safety</p> <p>19 administration at the Department of</p> <p>20 Transportation.</p> <p>21 Q. PHMSA?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 MR. SEBY: Mr. Crook, how about a</p> <p>25</p>	<p style="text-align: right;">Page 68</p> <p style="text-align: center;">Crook</p> <p>1 in those regulations that you relied upon for the</p> <p>2 --</p> <p>3 A. I considered --</p> <p>4 Q. I'm sorry.</p> <p>5 A. I'm sorry.</p> <p>6 Q. -- that you relied upon with respect</p> <p>7 to the content and substantive nature of the</p> <p>8 Corps' land use regulations founded Title 36 of</p> <p>9 the Code of Federal Regulations?</p> <p>10 A. I believe that Colonel Henderson and</p> <p>11 his district council and then --</p> <p>12 Q. Would that be Thomas Strahan?</p> <p>13 A. I actually don't -- I think any</p> <p>14 communications that I recall were through Colonel</p> <p>15 Henderson relying on his counsel. I don't recall</p> <p>16 specifically speaking directly with the district</p> <p>17 council.</p> <p>18 Q. Okay.</p> <p>19 How about anyone else that you would</p> <p>20 say you consider to be an expert that you relied</p> <p>21 upon with regard to the content and nature of the</p> <p>22 Corps' regulations?</p> <p>23 A. The Army general counsel's office.</p> <p>24 Q. And who would that be?</p> <p>25</p>
<p style="text-align: right;">Page 67</p> <p style="text-align: center;">Crook</p> <p>1 short break?</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. SEBY: Miss Zilloli; is that</p> <p>4 acceptable?</p> <p>5 MS. ZILLOLI: Yes, thank you.</p> <p>6 MR. SEBY: Shall we say 10 minutes.</p> <p>7 Let's go off the record, please.</p> <p>8 THE VIDEOGRAPHER: We're off the</p> <p>9 record 3:31 p.m. UTC. 11:31 a.m. Eastern.</p> <p>10 (A break from the record was taken.)</p> <p>11 THE VIDEOGRAPHER: Back on the</p> <p>12 record 11:41 a.m. Eastern, 3:41 p.m., UTC.</p> <p>13 Q. Mr. Crook, we're back on the record</p> <p>14 after a short 10 minute break.</p> <p>15 Before the break, I was asking you</p> <p>16 about your familiarity with the Corps' land use</p> <p>17 regulations governing the Corps' land properties</p> <p>18 associated with water projects that the Corps</p> <p>19 manages pursuant to the Federal Flood Control Act</p> <p>20 as amended.</p> <p>21 You received guidance you said from</p> <p>22 people inside and outside the Corps concerning</p> <p>23 those management authorities and regulations.</p> <p>24 Who did you consider to be an expert</p> <p>25</p>	<p style="text-align: right;">Page 69</p> <p style="text-align: center;">Crook</p> <p>1 A. The assistant general counsel who</p> <p>2 deals with or deputy general counsel, I guess who</p> <p>3 deals with civil works issues is Craig Schmander.</p> <p>4 Q. And you relied upon Mr. Schmander</p> <p>5 with respect to the content substantive nature of</p> <p>6 the Corps' regulations governing land use at</p> <p>7 Corps projects?</p> <p>8 A. He and his staff were our counsel</p> <p>9 and so, yes, for legal interpretations I relied</p> <p>10 on him and his staff.</p> <p>11 Q. And did he provide you with such</p> <p>12 guidance concerning the Corps' land use</p> <p>13 regulations at its water projects?</p> <p>14 A. He provided either his view or</p> <p>15 summary of what the regulations were, he or his</p> <p>16 staff.</p> <p>17 Q. So you were specifically provided</p> <p>18 legal counsel on the content of the Corps land</p> <p>19 use regulations?</p> <p>20 MS. ZILLOLI: Objection. We are</p> <p>21 starting to get into attorney/client privilege.</p> <p>22 If you can answer without disclosing the</p> <p>23 substance of the communication, you can answer.</p> <p>24 Q. And that's what the question is all</p> <p>25</p>

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<p style="text-align: right;">Page 70</p> <p>1 Crook</p> <p>2 about. Not to get into that.</p> <p>3 I'm asking was such advice provided</p> <p>4 on that specific topic?</p> <p>5 A. To the extent that the governing</p> <p>6 regulations were relevant to decisions about what</p> <p>7 to do regarding the protest on Corps property, I</p> <p>8 received legal advice from counsel.</p> <p>9 Q. Which counsel?</p> <p>10 A. Craig Schmander and there were a</p> <p>11 couple of other people on his team, but I don't</p> <p>12 remember specifically which member of his staff</p> <p>13 was most engaged on that issue.</p> <p>14 Q. Okay. All right.</p> <p>15 So with respect to the career</p> <p>16 military people in the Corps that you interacted</p> <p>17 with, let's go from the top of the Corps of</p> <p>18 Engineers at the time, who I understand the chief</p> <p>19 of the engineers at that time was Semonite, Todd</p> <p>20 Semonite; is that accurate?</p> <p>21 A. Yes.</p> <p>22 Q. Was he your boss?</p> <p>23 A. No.</p> <p>24 Q. And in that respect, what</p> <p>25 relationship professionally did you have to him</p>	<p style="text-align: right;">Page 72</p> <p>1 Crook</p> <p>2 General Spellmon? Was he your boss?</p> <p>3 A. No.</p> <p>4 Q. And -- so you didn't have to follow</p> <p>5 his direction?</p> <p>6 A. No.</p> <p>7 Q. How about Colonel Henderson, the</p> <p>8 commander of the Omaha District of the United</p> <p>9 States Corps of Engineers, was he your boss?</p> <p>10 A. No.</p> <p>11 Q. And you didn't have to follow his</p> <p>12 direction?</p> <p>13 A. No.</p> <p>14 Q. All right.</p> <p>15 How about Lieutenant Colonel James</p> <p>16 Startzell, was he your boss?</p> <p>17 A. No.</p> <p>18 Q. And you didn't have to follow his</p> <p>19 direction?</p> <p>20 A. No.</p> <p>21 Q. Okay. All right.</p> <p>22 Now I want to switch to some more</p> <p>23 specific questions about the Dakota Access</p> <p>24 Pipeline protests.</p> <p>25 Mr. Crook, when did you first learn</p>
<p style="text-align: right;">Page 71</p> <p>1 Crook</p> <p>2 as a -- in relationship was one of respect or</p> <p>3 adherence to a chain of command?</p> <p>4 A. I do and did respect him.</p> <p>5 Generally, I think, technically, General Semonite</p> <p>6 and I had the same rank the way they sort of</p> <p>7 compare the civilian and the military, but as a</p> <p>8 practical matter, he generally engaged with</p> <p>9 Secretary Darcy at her level and my main</p> <p>10 counterpart was General Jackson, his deputy.</p> <p>11 Q. Okay.</p> <p>12 And Jackson was the deputy to Todd</p> <p>13 Semonite?</p> <p>14 A. The deputy for civil works. He had</p> <p>15 several deputies.</p> <p>16 Q. Okay.</p> <p>17 So Jackson reported to Semonite?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 And then with respect to the</p> <p>21 Northwest Division Commander, Todd Spellmon,</p> <p>22 pardon me, Scott Spellmon, do you know him?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 What was your relationship with now</p>	<p style="text-align: right;">Page 73</p> <p>1 Crook</p> <p>2 that protesters opposing the DAPL pipeline were</p> <p>3 physically present on Corps of Engineers managed</p> <p>4 lands in the State of North Dakota?</p> <p>5 A. It was either in August or September</p> <p>6 of 2016.</p> <p>7 Q. And how did you learn that, sir?</p> <p>8 A. I believe I learned at the protests</p> <p>9 themselves from news reports. I don't recall</p> <p>10 specifically when or how I learned that at least</p> <p>11 part of the protests were on Army Corps of</p> <p>12 Engineer's owned property.</p> <p>13 Q. At any time prior to that</p> <p>14 circumstance occurring, did anyone warn or</p> <p>15 threaten you of that risk occurring?</p> <p>16 MS. ZILLOLI: Objection. Ambiguous.</p> <p>17 A. Before the protests started?</p> <p>18 Q. Yes.</p> <p>19 A. No, I don't recall any warning of</p> <p>20 that nature.</p> <p>21 Q. Okay.</p> <p>22 But you had already told me that you</p> <p>23 were aware of the potential for that happening?</p> <p>24 A. I was aware generally of the</p> <p>25 potential for controversy and potentially</p>

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1 protests.

2 Q. And I'm trying to understand how you

3 became aware of that generally.

4 A. I think it was partially based on

5 news reports, partially based on information that

6 was relayed to me, as I mentioned before, from --

7 I recall specifically Rohan Patel at the White

8 House. I don't recall specific other ways that

9 it got on my radar.

10 Q. What is your testimony, Mr. Crook,

11 with respect to this question: Did anyone ever

12 tell you that they were preparing to support or

13 engage in protests against the Army Corps of

14 Engineers with respect to the DAPL pipeline at

15 any time prior to your learning that they

16 actually occurred?

17 A. I don't recall any specific

18 statements that people were planning to protest.

19 Q. Okay.

20 A. Before the protests started?

21 Q. Were you aware of any efforts

22 outside the United States Government to organize

23 or support such protests?

24 A. Not that I recall.

25

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Crook

1 Q. Were you aware of any discussions

2 within the United States Government in advance of

3 the protests occurring with respect to their

4 threat?

5 A. I only really recall general

6 concerns about controversy, not any specific

7 protest, plans or threats.

8 Q. Were you aware of any

9 nongovernmental organization planning to support

10 or implement such protests?

11 A. Before the protests started?

12 Q. Yes, sir.

13 A. Not that I recall.

14 Q. At all?

15 A. I don't recall being aware before

16 they started.

17 Q. All right. Okay.

18 And so I asked you when did you

19 become aware of the protests, and you, I believe,

20 and correct me if I'm wrong, you said that you

21 first learned of them after they started to occur

22 from news reports; is that correct?

23 A. Yes.

24 Q. And what did you learn from those

25

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1 news reports?

2 A. That the Standing Rock Sioux Tribe

3 was having regular protests or vigils either on

4 the north side of the reservation or, you know,

5 just south of the planned pipeline crossing.

6 Q. And so my question that started this

7 issue was: When did you first learn that the

8 protesters were present on Corps of Engineers

9 lands?

10 A. It was after I first learned of the

11 protests, and I don't recall specifically when.

12 It would have been either late August or early

13 September.

14 Q. So help me understand, what you're

15 telling me is you learned of the protests before

16 they were on Corps land? Is that your testimony?

17 A. No. My testimony is when I first

18 learned of the protests, I didn't know who owned

19 the property that they were located on.

20 Q. Okay.

21 And that was your first knowledge of

22 the protests; is that right?

23 A. Right.

24 Q. And then after that you subsequently

25

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1 learned it turns out they are on Corps property?

2 A. I subsequently learned that at least

3 a portion of the protests were on Army Corps of

4 Engineers property.

5 Q. And when was that?

6 A. I don't recall whether it was late

7 August or early September but in that general

8 time period.

9 Q. Any earlier than late August?

10 A. No.

11 Q. Okay.

12 And from whom did you learn that

13 they were partially located, as you said, on

14 Corps property?

15 A. I don't specifically recall who I

16 learned it from.

17 Q. And how did you know that they were

18 partially on Corps property and partially on some

19 other property?

20 A. I think as we heard more about the

21 protests, you know, I learned, you know,

22 additional details about the location and the

23 property.

24 Q. And whom --

25

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<p style="text-align: right;">Page 78</p> <p style="text-align: center;">Crook</p> <p>1 A. In the general time period.</p> <p>2 Q. Pardon. Pardon me, sir.</p> <p>3 Who did you learn those details</p> <p>4 from?</p> <p>5 A. The details, I learned different</p> <p>6 details at different times from different people.</p> <p>7 Q. Okay.</p> <p>8 And what did you do once you learned</p> <p>9 that protesters were locating themselves on</p> <p>10 property managed by the Corps of Engineers?</p> <p>11 A. I participated in several meetings</p> <p>12 and calls about the issue surrounding the</p> <p>13 protests and the presence on at least a part of</p> <p>14 them on Corps property.</p> <p>15 Q. Okay.</p> <p>16 At that time your participation in</p> <p>17 several meetings and calls, were those</p> <p>18 exclusively within offices of the United States</p> <p>19 Government?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. Because I received calls and</p> <p>23 communications from people outside the government</p> <p>24 as well as inside the government.</p> <p>25</p>	<p style="text-align: right;">Page 80</p> <p style="text-align: center;">Crook</p> <p>1 land and I want to know what you're going to do</p> <p>2 about it.</p> <p>3 Q. Anything else that you recall the</p> <p>4 governor saying to you about the protesters?</p> <p>5 Just, hey, you've got somebody on your land.</p> <p>6 What are you going to do about it or did he say</p> <p>7 anything more with respect to concerns or</p> <p>8 requests made to you?</p> <p>9 A. I mean, he generally expressed</p> <p>10 concerns about the protests, but I don't</p> <p>11 specifically recall anything else he would have</p> <p>12 raised beyond what I just said.</p> <p>13 Q. Okay.</p> <p>14 With all respect, sir, why did he</p> <p>15 talk to you?</p> <p>16 MS. ZILLOLI: Objection.</p> <p>17 Speculation.</p> <p>18 A. He'd be the best person to know why</p> <p>19 he called me.</p> <p>20 Q. Okay. All right.</p> <p>21 So when you spoke with the governor</p> <p>22 of North Dakota, and I believe you're referring</p> <p>23 to Governor Jack Dalrymple; is that correct?</p> <p>24 A. Yes, at the time.</p> <p>25</p>
<p style="text-align: right;">Page 79</p> <p style="text-align: center;">Crook</p> <p>1 Q. And whom would that be?</p> <p>2 A. Specifically outside of the</p> <p>3 government?</p> <p>4 Q. Yes.</p> <p>5 A. The Governor of North Dakota, the</p> <p>6 governor's chief of staff. There may have been</p> <p>7 others, but those were the main people outside of</p> <p>8 the government.</p> <p>9 Q. Okay.</p> <p>10 So apart from your federal</p> <p>11 colleagues in the Corps and other federal</p> <p>12 agencies, your knowledge of the early aspects of</p> <p>13 the protest came from the contacts initiated to</p> <p>14 you from the State of North Dakota's government;</p> <p>15 is that correct?</p> <p>16 A. That is one of the contacts outside</p> <p>17 of federal agencies.</p> <p>18 Q. How about before we talk about the</p> <p>19 other contacts that you've got in mind that I</p> <p>20 know you'll tell me about in a minute, what did</p> <p>21 the Governor of North Dakota say to you?</p> <p>22 A. What I recall, and I believe we had</p> <p>23 a couple of conversations, I recall him saying</p> <p>24 there are protesters on Army Corps of Engineers</p> <p>25</p>	<p style="text-align: right;">Page 81</p> <p style="text-align: center;">Crook</p> <p>1 Q. At the time.</p> <p>2 When you spoke with the Governor of</p> <p>3 North Dakota, was anyone else part of that</p> <p>4 conversation?</p> <p>5 A. I don't recall who or whether he had</p> <p>6 other people on his end of the call.</p> <p>7 Q. I believe you meant --</p> <p>8 A. And I don't --</p> <p>9 Q. -- the chief of staff. I believe</p> <p>10 you mentioned the chief of staff.</p> <p>11 A. I had several conversations aside</p> <p>12 from with the Governor with his chief of staff,</p> <p>13 and so I don't recall specifically when the</p> <p>14 Governor called whether he had the chief of staff</p> <p>15 on the line or not on that specific call.</p> <p>16 I also don't recall who from either</p> <p>17 the Army or the Corps of Engineers would have</p> <p>18 been on our side of the call.</p> <p>19 Q. Okay.</p> <p>20 What did you tell the Governor you</p> <p>21 would do with respect to his request?</p> <p>22 A. I don't recall specifically</p> <p>23 committing to any action -- yes. I don't recall</p> <p>24 specifically any commitments that I made.</p> <p>25</p>

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<p style="text-align: right;">Page 82</p> <p style="text-align: center;">Crook</p> <p>1 Q. Okay.</p> <p>2 At that time, did you have any</p> <p>3 strong opinions about the protesters being on the</p> <p>4 Corps of Engineers property?</p> <p>5 A. No, I don't think I had strong</p> <p>6 opinions. I just understood that it was a</p> <p>7 complex problem and issue.</p> <p>8 Q. Mr. Crook, when did the DAPL</p> <p>9 protesters start camping overnight on Corps of</p> <p>10 Engineers land?</p> <p>11 MS. ZILLOLI: Objection.</p> <p>12 Foundation.</p> <p>13 A. I think it was sometime in August or</p> <p>14 early September. I'm not sure.</p> <p>15 Q. Okay.</p> <p>16 Do you know whether those protesters</p> <p>17 were sleeping in a designated camp ground on</p> <p>18 Corps property?</p> <p>19 A. I don't believe it was a designated</p> <p>20 camp ground.</p> <p>21 Q. Do you recall learning that</p> <p>22 protesters built or were building structures and</p> <p>23 roads in the protest camp located on Corps of</p> <p>24 Engineers property?</p> <p>25</p>	<p style="text-align: right;">Page 84</p> <p style="text-align: center;">Crook</p> <p>1 protests to move to a different location.</p> <p>2 Q. I'm talking about the location to</p> <p>3 which they went.</p> <p>4 Do you recall him encouraging people</p> <p>5 to protest on Corps of Engineers property?</p> <p>6 A. I don't specifically recall that,</p> <p>7 no.</p> <p>8 Q. What other lands do you think he was</p> <p>9 encouraging people to attend and protest on?</p> <p>10 MS. ZILLOLI: Objection.</p> <p>11 Speculation.</p> <p>12 A. I recall at some point later in the</p> <p>13 fall him encouraging some of the protest to move</p> <p>14 south of the Cannonball River I believe onto</p> <p>15 Standing Rock Sioux reservation lands.</p> <p>16 Q. Do you know why Chairman Archambault</p> <p>17 didn't specify the protesters coming to North</p> <p>18 Dakota to oppose the Dakota Access Pipeline, why</p> <p>19 he didn't ask them to come onto the Standing Rock</p> <p>20 Sioux tribe reservation?</p> <p>21 MS. ZILLOLI: Objection.</p> <p>22 Speculation. Assumes facts.</p> <p>23 A. I don't know what his motivations</p> <p>24 were, no.</p> <p>25</p>
<p style="text-align: right;">Page 83</p> <p style="text-align: center;">Crook</p> <p>1 MS. ZILLOLI: Objection. Assumes</p> <p>2 facts not in evidence.</p> <p>3 A. I recall receiving reports that</p> <p>4 there were some wooden structures</p> <p>5 built at some point in time on <b>ND OBJECTION:</b></p> <p>6 <b>Includes argument</b></p> <p>7 Q. Do you know why they came</p> <p>8 on to Corps land?</p> <p>9 MS. ZILLOLI: Objection.</p> <p>10 Speculation. Foundation.</p> <p>11 A. No, they'd be the best to answer</p> <p>12 that.</p> <p>13 Q. Do you believe that Standing Rock</p> <p>14 Sioux Tribe Chairman Archambault was publicly</p> <p>15 calling for people to come to North Dakota to</p> <p>16 protest against the Dakota Access Pipeline?</p> <p>17 MS. ZILLOLI: Objection. Assumes</p> <p>18 facts.</p> <p>19 Q. I'm asking your belief, sir.</p> <p>20 A. I believe, I believe that I saw news</p> <p>21 reports in which he was calling for protests in</p> <p>22 North Dakota.</p> <p>23 Q. And do you recall him asking those</p> <p>24 protesters to gather in a specific location?</p> <p>25 A. I recall at times him asking</p>	<p style="text-align: right;">Page 85</p> <p style="text-align: center;">Crook</p> <p>1 Q. Mr. Crook, is the Standing Rock</p> <p>2 Sioux Tribe responsible for the use or management</p> <p>3 of the Corps of Engineers Oahe project?</p> <p>4 MS. ZILLOLI: Objection to the</p> <p>5 extent it calls for a legal conclusion.</p> <p>6 Q. Mr. Crook?</p> <p>7 A. They have certain treaty rights</p> <p>8 regarding Lake Oahe, but the Army Corps of</p> <p>9 Engineers is primarily responsible for the</p> <p>10 management of the lake.</p> <p>11 Q. How about for the project lands, the</p> <p>12 dry land upon which borders the United States</p> <p>13 waterway, the Missouri River, the land, is the</p> <p>14 Standing Rock Sioux Tribe responsible in any</p> <p>15 respect for the use or management of those lands?</p> <p>16 MS. ZILLOLI: Same objection.</p> <p>17 A. I know that there are lands along</p> <p>18 the river that are the Corps of Engineers</p> <p>19 property.</p> <p>20 I don't recall if the tribe had, and</p> <p>21 their former tribal lands, I don't recall if that</p> <p>22 gave them any specific rights or responsibilities</p> <p>23 regarding management of the land.</p> <p>24 Q. But you don't know one way or the</p> <p>25</p>

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Calls  
for  
legal  
concl.,  
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2 other?

3 MS. ZILLOLI: Same objection.

4 A. Sitting here today, I don't no.

5 Q. Okay.

6 Did you at the time have an opinion

7 as to that question, the time being August of

8 2016, Mr. Crook?

9 A. I don't think I had an opinion. I

10 may have had more specific knowledge of that

11 issue at the time.

12 Q. Mr. Crook, are you aware of whether

13 any Corps of Engineers officials referred to the

14 protesters as trespassers in the month of

15 August 2016?

16 A. I don't specifically recall the

17 Corps of Engineers referring to them as

18 trespassers at that time.

19 Q. How about in the month of September,

20 2016?

21 A. I don't recall in September the

22 Corps referring to them as trespassers, but I'm

23 not saying they didn't either.

24 Q. But you're saying you don't know?

25 A. I don't have a specific recollection

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1 Crook

2 of that today, right.

3 Q. Right.

4 Mr. Crook, how about in the month of

5 October of 2016?

6 A. Again, I don't have a specific

7 recollection of the someone at the Corps

8 characterizing them as trespassers.

9 Q. And how about in the month of

10 November 2016?

11 A. In late November Colonel Henderson

12 issued an announcement that after a certain date

13 the trespassers needed to leave Corps property

14 and move south of the Cannonball River. I don't

15 know -- I don't know whether that announcement

16 referred to trespassing or not.

17 Q. Okay.

18 You're referring to a letter from

19 Colonel Henderson in late November.

20 Would that be November 25th?

21 A. I believe it was November 25th. I

22 couldn't tell you right now whether it was a

23 letter or a press release or what form the

24 announcement took.

25 Q. Okay.

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2 So you mentioned that was a

3 had-to-leave letter?

4 A. It was some form of announcement

5 that by X date certain that the protesters needed

6 to leave the Corps property.

7 Q. Okay.

8 So November 25th I think is what

9 we're talking about.

10 Do you think that in the month of

11 December the Corps considered the protesters on

12 the Corps' property to be trespassers?

13 MS. ZILLOLI: Objection.

14 Speculation.

15 Q. If you know?

16 A. I don't know whether legally they

17 considered them trespassers. I know that they

18 were strongly encouraging them to leave.

19 Q. Strongly encouraging?

20 A. Yes.

21 Q. Okay.

22 How about in the month of

23 January 2017, did the Corps consider the

24 protesters located on any of its lands under its

25 jurisdiction to be trespassers?

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2 MS. ZILLOLI: Objection.

3 Speculation and legal conclusion.

4 A. At least up until January 20th I'm

5 not aware of whether there were still any

6 protesters on Army Corps of Engineers land.

7 Q. Mr. Crook, did you ever go to the

8 State of North Dakota?

9 A. Yes.

10 Q. And when did you go?

11 A. It was earlier in the year.

12 Q. When?

13 A. It was probably in the spring of

14 2016.

15 Q. And why did you go in the spring of

16 2016 to the State of North Dakota?

17 A. To sign up project partnership

18 agreement for a flood risk management project for

19 the Fargo Moorhead Community and to tour the

20 location of the project.

21 Q. The Fargo Moorhead flood control

22 project?

23 A. Yes.

24 Q. And so in your capacity as principal

25 deputy assistant secretary of the Army, you had

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<p style="text-align: right;">Page 90</p> <p style="text-align: center;">Crook</p> <p>1 authorization to sign such agreements?</p> <p>2 A. I had authorization to sign that</p> <p>3 agreement, yes.</p> <p>4 Q. I see.</p> <p>5 Per a specific delegation?</p> <p>6 A. I believe there was some form of</p> <p>7 delegation from the assistant secretary.</p> <p>8 Q. Okay.</p> <p>9 Miss Darcy?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 How many other such delegations were</p> <p>13 you afforded?</p> <p>14 A. Generally, I did not receive any</p> <p>15 formal delegations. I was more of an advisor to</p> <p>16 the assistant secretary.</p> <p>17 Q. Okay.</p> <p>18 Mr. Crook, do you recall knowing or</p> <p>19 knowing today, recalling today, which protest</p> <p>20 camps located on Corps land in opposition to the</p> <p>21 Dakota Access Pipeline were located south of the</p> <p>22 Cannonball River?</p> <p>23 A. Sitting here today, I don't remember</p> <p>24 exactly where the property lines and the Corps</p> <p>25</p>	<p style="text-align: right;">Page 92</p> <p style="text-align: center;">Crook</p> <p>1 Q. Did you receive regular status</p> <p>2 reports regarding the DAPL's protesters</p> <p>3 occupation of Corps lands ever?</p> <p>4 A. During a period, that period in the</p> <p>5 fall of 2016, I did receive fairly regular</p> <p>6 reports and information regarding the protests</p> <p>7 generally.</p> <p>8 Q. From whom?</p> <p>9 A. From General Jackson. At times he</p> <p>10 would have General Spellmon and Colonel Henderson</p> <p>11 on the line. I also received reports from people</p> <p>12 at the Department of Interior.</p> <p>13 Q. Who would that be?</p> <p>14 A. In the department -- go ahead.</p> <p>15 Q. I'm sorry, Mr. Crook.</p> <p>16 Who in the Department of Interior</p> <p>17 did you receive reports from?</p> <p>18 A. There were different people at</p> <p>19 different times, but one of them was Tommy</p> <p>20 Boudreau, then the chief of staff. Another was</p> <p>21 Hillary Tompkins, the solicitor. Sometimes a</p> <p>22 person named Jody, who was her deputy or on her</p> <p>23 staff and then Larry Roberts, who was the, I</p> <p>24 think, assistant secretary in charge of an</p> <p>25</p>
<p style="text-align: right;">Page 91</p> <p style="text-align: center;">Crook</p> <p>1 versus the reservation lines were.</p> <p>2 Q. Same question, sir, with respect to</p> <p>3 protest camps located on Corps of Engineers lands</p> <p>4 protesting the Dakota Access Pipeline located</p> <p>5 north of the Cannonball River?</p> <p>6 A. I recall that a portion of, at least</p> <p>7 a portion of the protests locations was north of</p> <p>8 at least a bend of the Cannonball River. I know</p> <p>9 that the river sort of has some tributaries or</p> <p>10 meanders in that area, but I believe part of it</p> <p>11 was north of the Cannonball River.</p> <p>12 Q. Yes.</p> <p>13 Do you remember which camps you're</p> <p>14 referring to?</p> <p>15 A. I don't remember any specific names</p> <p>16 of the camps, if that's what you're asking.</p> <p>17 Q. Yes, sir.</p> <p>18 But you do recall there was more</p> <p>19 than one?</p> <p>20 A. I recall that there was more than</p> <p>21 one location for the protest camps, yes.</p> <p>22 Q. Did you ever go to that area of the</p> <p>23 State of North Dakota?</p> <p>24 A. No.</p> <p>25</p>	<p style="text-align: right;">Page 93</p> <p style="text-align: center;">Crook</p> <p>1 overseeing the Bureau of Indiana Affairs.</p> <p>2 Q. How frequently did you receive such</p> <p>3 reports?</p> <p>4 A. From interior department or just in</p> <p>5 generally reports on the status --</p> <p>6 Q. Both?</p> <p>7 A. -- from various sources? I'd say</p> <p>8 several times a week during the fall. Sometimes</p> <p>9 daily.</p> <p>10 Q. Did this become a big deal on your</p> <p>11 other duties as assigned to responsibilities?</p> <p>12 A. It did start to take a growing part</p> <p>13 of my time during that time period.</p> <p>14 Q. Okay.</p> <p>15 Did your knowledge and understanding</p> <p>16 of the protests against the Dakota Access</p> <p>17 Pipeline include information provided to you by</p> <p>18 the State of North Dakota?</p> <p>19 A. Yes.</p> <p>20 Q. And, specifically, from the State of</p> <p>21 North Dakota law enforcement?</p> <p>22 A. My main contact with the State of</p> <p>23 North Dakota was the governor's chief of staff.</p> <p>24 Q. Okay.</p> <p>25</p>

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1 Crook

2 How about other manners of

3 communication provided to you from the State of

4 North Dakota, who did they come from?

5 A. The direct communication -- so, in

6 addition to the couple of phone calls I mentioned

7 with the governor himself, the direct

8 communications I recall were through his chief of

9 staff.

10 Q. And how often did you speak with

11 that gentleman?

12 A. It varied whether we spoke or he

13 texted. I would say we had communications

14 probably a couple --

15 Q. I'm sorry.

16 A. Probably a couple times a week.

17 Sometimes daily.

18 Q. So it was pretty frequent then?

19 A. As I -- yes.

20 Q. And what was the, if you were to put

21 bookends around your time involved as principal

22 chief, pardon, principal deputy assistant

23 secretary of the Army, what are the period of

24 time that you're referring to having that

25 interaction with Mr. Rauschenberger, the chief of

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1 Crook

2 staff to Governor Dalrymple for the State of

3 North Dakota?

4 A. I believe it started the first week

5 of September or the week after Labor Day and

6 continued into at least mid December.

7 Q. Did you receive reports or briefings

8 on the protests against the Dakota Access

9 Pipeline from the pipeline company?

10 A. Yes.

11 Q. And what did those involve and when?

12 A. My primary direct conversations with

13 energy transfer partners of the pipeline company

14 were at least two meetings that we had at the

15 justice department. In the fall, I don't recall

16 the specific dates of them though.

17 In addition they fairly regularly

18 called the other staff members in our office.

19 Q. And would those individuals relay

20 the information to you?

21 A. I don't know if they relayed all of

22 the information, but it's something they thought

23 significant or, you know, merited raising they

24 would raise that with me, share it with me, yes.

25 Q. And did that concern the protests?

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1 Crook

2 A. At different times it concerned

3 either the status of the permitting, the status

4 of the easement, the protests or their

5 construction plans or schedules.

6 Q. Did you receive information or

7 briefings from any tribes concerning the

8 protests?

9 A. Yes, yes.

10 Q. Okay.

11 And with whom did you receive such

12 briefings?

13 A. Specifically on the protests?

14 Q. Yes.

15 A. I met with Chairman Archambault and

16 his council or staff. I believe I got --

17 received phone calls from leaders from other

18 tribes in North Dakota.

19 Q. And that was also during the

20 happening of the protests on Corps property?

21 A. That was during the time of the

22 protests.

23 Q. Okay.

24 And when you spoke with them, what

25 did you say?

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1 Crook

2 Let's take the Standing Rock for

3 starters.

4 A. Okay. So my main two, during the

5 protests, my main two meetings with Chairman

6 Archambault I was exploring whether there was

7 some, sort of deal between the tribe and the

8 pipeline company that could resolve the matter

9 and cause the protests to end.

10 Q. So you were exploring a negotiated

11 resolution between the tribe opposing the

12 pipeline and the pipeline company?

13 A. A group of us was exploring that,

14 yes, with both the tribe and the company.

15 Q. And who else was in your group, sir?

16 A. So there were a series of meetings

17 at the Department of Justice, and it was Sam

18 Hirsch from the Justice Department. There may

19 have been others on his staff at the environment

20 and natural resources at the Justice Department,

21 Assistant Secretary Darcy, myself, Tommy Boudreau

22 from the Department of the Interior, and I

23 believe Hillary Tompkins from the Department of

24 the Interior.

25 Q. And you had that group that you just

**ND OBJECTION:**  
As to 95:7-10,  
96:2-18,  
96:24-97:9,  
97:15-24;  
98:8-99:13 -  
Relevance (not  
responsive to the  
subject matter of  
the affirmative  
designation at  
94:20-95:6)

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98:8-100:9  
401-402, 602

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1 Crook

2 mentioned.

3 Anyone else involved?

4 A. I believe that Craig Schmander, Army

5 counsel, came, and there may have been others

6 from the government at the meeting that I'm not

7 recalling at this time.

8 Q. Who dispatched Mr. Boudreau or

9 Mr. or Miss Tompkins?

10 A. I'm sorry. What do you mean by

11 "dispatched"?

12 Q. On whose directions were they

13 attending those meetings?

14 MS. ZILLOLI: Objection.

15 Speculation.

16 Q. They just went because you asked

17 them?

18 A. I think technically they got an

19 invitation from the Justice Department to attend

20 the meetings because the meetings were at the

21 Justice Department.

22 What additional direction they were

23 given from their leadership or others, I'm not

24 specifically aware.

25 Q. Who is their leadership that you're

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1 Crook

2 referencing?

3 A. So their boss was the secretary of

4 the interior, at the time, Sally Jewell.

5 Q. Okay.

6 Was she aware that they were

7 participating in those meetings?

8 MS. ZILLOLI: Objection.

9 Speculation.

10 Q. To your knowledge, sir.

11 A. She was generally aware that they

12 were engaged on the issue. I don't know specific

13 meetings, you know, what her awareness was.

14 Q. And how do you know she was

15 generally aware, Miss Jewell that is?

16 A. Because they, from time to time,

17 referred to conversations with her. She spoke

18 sometime with Assistant Secretary Darcy about the

19 broader issues related to the pipeline.

20 Q. What broader issues, Mr. Crook, what

21 broader issues are you referring to?

22 A. Well, not just about the protests

23 but about tribal engagement, the Corps' decision

24 on the easements and permits.

25 Q. Was Miss Jewell opposed to the

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1 Crook

2 Corps' issuance of the permits and the easement?

3 MS. ZILLOLI: Objection.

4 Speculation. Foundation.

5 A. I would say generally the position

6 of the interior department staff, including

7 Miss Jewell, was that we should do more analysis

8 under NEPA of whether granting the permits and

9 easement was warranted.

10 Q. And you, sir, having worked at the

11 Council on Environmental Quality which, in many

12 respects, administers the NEPA statute that you

13 referring to, did you have an opinion with

14 respect to the Department of Interior's opinion

15 or position? Excuse me.

16 A. So that decision wasn't mine.

17 Q. That wasn't the question.

18 A. I'm sorry.

19 Q. That wasn't my question.

20 A. Okay.

21 Q. Did you have an opinion on the

22 Department of Interior's position that you just

23 told me?

24 A. I probably had an opinion that

25 evolved over time.

100:21-101:11  
401-402

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1 Crook

2 Q. And that was what?

3 A. We announced in September that we

4 were reviewing the permitting decision for NEPA

5 for adequacy.

6 Q. Who is the, who's the "we" that

7 announced that?

8 A. It was -- I'm sorry. It was a joint

9 announcement among the Department of Justice, the

10 Department of Army and the Department of

11 Interior.

12 Q. So the administration on September

13 9th announced its position?

14 A. It was generally that time period.

15 I don't remember the specific day.

16 Q. Okay.

17 We can go to that in a moment, but

18 that announcement occurred after the Corps made a

19 decision with respect to the permits and the

20 easement; is that correct?

21 A. After the Corps had made a decision

22 on the permits but not after the Corps had made a

23 decision on the easement.

24 Q. Okay.

25 So the Corps had already granted

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102:6-15,  
102:23-103:9  
602, 611,  
calls for legal  
conclusion  
701-702

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1 Crook

2 permits for the Dakota Access Pipeline crossing

3 but not yet the easement; is that fair?

4 A. Yes.

5 Q. All right.

6 Mr. Crook, when did the Corps decide

7 to let the protesters in opposition to the Dakota

8 Access Pipeline that were present on the Corps

9 property, when did the Corps decide to allow

10 those protesters to remain on the Corps property?

11 MS. ZILLOLI: Objection. Assumes

12 facts not in evidence. Speculation.

13 A. I would say that the Corps issued a

14 special use permit I believe in September

15 regarding the protests.

16 Q. Is that your testimony?

17 A. Yes. It may have been -- I don't

18 remember the specific date of the issuance, but I

19 do recall that a special use permit was issued.

20 Q. Issued as in effect or proposed?

21 MS. ZILLOLI: Objection. Calls for

22 a legal conclusion.

23 Q. In your capacity as principal deputy

24 to the assistant secretary to the Army for Civil

25 Works, is it your testimony at that a permit was

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1 Crook

2 issued or proposed?

3 MS. ZILLOLI: Same objection.

4 A. I believe I recall that the Omaha

5 District issued a permit.

6 Q. To whom?

7 A. I'd have to look at the permits

8 specifically, but I generally recall that it may

9 have been to the Standing Rock Sioux Tribe.

10 Q. Were they the only protesters

11 located on Corps land?

12 A. During the general period that we're

13 talking about?

14 Q. The period which we are talking

15 about, sir, is August of 2016 to well after you

16 left the service of the United States but, yes.

17 A. So early on I don't know if it was

18 just them or there were others involved.

19 As the protests grew, there were

20 definitely a lot of protesters that were not

21 members of the Standing Rock Sioux Tribe.

22 Q. Okay.

23 Do you know, Mr. Crook, how long

24 protesters were present on United States property

25 managed by the Corps of Engineers?

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1 Crook

2 A. I don't know specifically how long

3 there may have been one or more protesters.

4 I know generally how long the large

5 protests went.

6 Q. Would you be surprised if it was

7 told to you that protesters were present on Corps

8 property belonging to the United States from mid

9 summer through 2016 to March and April of 2017?

10 MS. ZILLOLI: Objection. Assumes

11 facts.

12 Q. Would that surprise you, sir?

13 A. I don't know whether there were

14 protesters from mid December to January 20th, but

15 the rest of the time period you mentioned would

16 not surprise me.

17 Q. Well, I didn't say mid December to

18 January. I said mid summer, which is, let's say,

19 August, for sake of this questioning.

20 Would it surprise you that there

21 were protesters present in mid August, because I

22 think you already said that, through March or

23 April of the following year?

24 MS. ZILLOLI: Objection. Assumes

25 facts.

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1 Crook

2 A. Again, I believe that there were

3 protests from August until mid September and I

4 believe there were protests after January 20th.

5 I actually don't know the status of

6 the protests from mid December to January 20th.

7 Q. Mr. Crook, do you recall when you

8 first learned that the Standing Rock Sioux Tribe

9 submitted an application of sorts seeking a

10 special use permit from the Corps of Engineers?

11 A. I believe I learned about a request

12 for a special use permit sometime in early

13 December.

14 Q. Early December?

15 A. I'm sorry, September. I'm sorry. I

16 misspoke.

17 Q. Okay.

18 Mr. Crook, do you recall being

19 advised by the Army Corps of Engineers that a

20 permit application of sorts was submitted by the

21 Standing Rock Sioux Tribe for seeking a special

22 use permit but the Corps' position with respect

23 to that submittal was it lacked required

24 information for approval? Do you know when you

25 first learned that?



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<p style="text-align: right;">Page 106</p> <p>Crook</p> <p>MS. ZILLOLI: Objection. Assumes facts.</p> <p>A. What I recall is learning that there had been an application for a special use permit, and there were questions about whether certain conditions for that permit had been met or not.</p> <p>Q. Okay.</p> <p>Would it surprise you if you were told that in mid to late August of 2016 and not September?</p> <p>A. No, I'm not certain as of the date.</p> <p>Q. Okay. We'll go to that in a moment.</p> <p>Do you recall who told you what you just said with respect to the special use permit application being sought by the Standing Rock Sioux Tribe?</p> <p>A. I don't recall who specifically told me. I just remember it being a discussion in meetings with a, you know, with a broader group of people.</p> <p>Q. Would it surprise you that the Standing Rock Sioux Tribe sought an application or filed an application of sorts to the Corps seeking a special use permit prior to August 25th</p>	<p style="text-align: right;">Page 108</p> <p>Crook</p> <p>discussion from at least September into December.</p> <p>Q. So, in deed, several months, sir?</p> <p>A. Yes, that is several months.</p> <p>Q. What was your role in the Corps consideration of the request by the Standing Rock Sioux Tribe for a special use permit from the Corps?</p> <p>A. I believe that the responsibility for that was with the district commander in consultation with his chain of command.</p> <p>Q. Your role, sir.</p> <p>The question is --</p> <p>A. My role --</p> <p>Q. What was your role --</p> <p>MS. ZILLOLI: Paul, can you let him answer the question, please, finish his answer, I mean.</p> <p>Q. Pardon me, Mr. Crook. I just want to make sure when I ask a question and you provide a response that you're responding to my question.</p> <p>A. My role is to be aware of what decisions that were being made potentially to advise the assistant secretary, if any decisions</p> <p style="text-align: right;"><b>ND OBJ.: Non-Responsive</b></p>
<p style="text-align: right;">Page 107</p> <p>Crook</p> <p>of 2016?</p> <p>A. That they submitted one? That would not surprise me. I just don't recall the exact date.</p> <p>Q. Well, the question is would it surprise you if it was prior to August 25 of 2016?</p> <p>MS. ZILLOLI: Objection. Asked and answered.</p> <p>Q. I don't think so.</p> <p>A. Because I don't know the date, it wouldn't surprise me if it was a different date than August 25th.</p> <p>Q. Okay.</p> <p>Do you know, Mr. Crook, how long the Corps considered a request by the Standing Rock Sioux Tribe for a special use permit?</p> <p>A. I don't specifically recall how long they considered it. I know that it was a subject of discussion over several weeks.</p> <p>Q. Would it surprise you if it was actually several months?</p> <p>A. No, I think it would -- issues surrounding what to do was a subject of</p>	<p style="text-align: right;">Page 109</p> <p>Crook</p> <p>were hers and make sure that she and our office had good information about what was happening.</p> <p>Q. Okay.</p> <p>Mr. Crook, who in the Corps, or the administration for that matter, made the decision to pull the district commander's determination on the special use permit up to the Corps headquarters?</p> <p>MS. ZILLOLI: Objection. Assumes facts.</p> <p>A. Yeah, I don't know whether that -- I don't know whether -- I know the Corps headquarters was consulted. I don't know ultimately who issued the decision or made the decision.</p> <p>Q. Were you involved in consideration of whether to provide the Standing Rock Sioux Tribe with a proposed special use permit subject to conditions of compliance?</p> <p>A. I was briefed on the request for the permit and surrounding the decision on the permit.</p> <p>Q. Were you involved in the decision making process, sir?</p> <p style="text-align: right;"><b>ND OBJ.: Non-Responsive</b></p> <p style="text-align: right;"><b>109: 5-16 602, 611</b></p>

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2 A. I was involved in meetings

3 discussing the decision.

4 Q. And what were those discussions?

5 A. Just about the different factors and

6 legal issues that the Corps needed to weigh in

7 making that decision.

8 Q. Okay.

9 With whom in the administration

10 outside of the Department of Army did you consult

11 in that process?

12 A. Specifically regarding the special

13 use permit?

14 Q. Yes, sir.

15 A. I shared information about the

16 special use permit issues generally with

17 counterparts of the Department of the Interior

18 and at the Department of Justice.

19 Q. Did you receive instructions from

20 those people that you collaborated with in the

21 Department of Interior or Department of Justice

22 with respect to the decision on the application

23 for a special use permit?

24 A. I didn't receive instructions.

25 Q. Did you receive positions from those

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1 Crook

2 federal agencies?

3 A. The specific people I was talking to

4 at the DOJ and Department of the Interior had

5 opinions and views.

6 Q. And they were what?

7 A. The interior department was

8 generally concerned about First Amendment issues

9 surrounding the protests and our handling of the

10 request for a special use permit and, generally,

11 their agencies responsibility to the tribes. I

12 don't recall -- okay, sorry.

13 Q. No problem. Pardon me.

14 How does that opinion and view

15 relate to the decision of whether or not the

16 Corps of Engineers under its regulatory authority

17 should or should not propose a special use permit

18 to the Standing Rock Sioux Tribe as the tribe

19 applied for such permit?

20 MS. ZILLOLI: Objection. Legal

21 conclusion. You can answer.

22 A. I viewed it as a view shared by a

23 fellow federal agency and the decision maker.

24 Q. Mr. Crook, I understand that they

25 shared views with you. You've said that.

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1 Crook

2 What was the view expressed to you

3 by those agencies concerning the Corps' decision

4 whether or not to issue, pardon me, to propose a

5 special use permit to the Standing Rock Sioux

6 Tribe based upon the tribe's application for one?

7 MS. ZILLOLI: Same objection.

8 A. I don't recall them having views on

9 the specifics of the special use permit, just

10 generally on our treatment of the tribes and

11 their First Amendment rights.

12 Q. How did that view and opinion fit

13 within the context of you telling me that you

14 shared the special use permit proposal with them?

15 MS. ZILLOLI: Objection. Misstates

16 testimony.

17 Q. Well, then, Mr. Crook, please

18 correct me then because I understood, because I

19 asked the question, whom did you consult with

20 concerning whether or not to issue a proposed

21 special use permit, and you told me that you

22 shared that information with the Department of

23 the Interior and the Department of Justice and

24 they provided views and opinions.

25 So what do I have wrong about what

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1 Crook

2 you just told me if that's not correct?

3 A. I shared generally that there was a

4 special use permit under consideration and

5 generally some of the issues surrounding it. I

6 don't recall whether or not I shared anything

7 more specific than that.

8 Q. What did the Corps ask the Standing

9 Rock Sioux tribe to do with respect to addressing

10 any problems or deficiencies the Corps noted on

11 the tribe's application for a special use permit?

12 A. What I recall is there may have been

13 some issue regarding liability insurance or a

14 bond, and I believe there were other issues with

15 the permit application, but I just standing here

16 -- sitting here right now I don't remember

17 specifically what the other issues were.

18 Q. So the question is what did the

19 Corps do to resolve those issues prior to

20 proposing a special use permit or did it?

21 A. I know that Colonel Henderson had

22 several discussions with the tribe, but I wasn't

23 always aware of the specific either time or

24 substance of those discussions.

25 Q. Mr. Crook, do you know as the



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2 principal deputy assistant secretary of the Army

3 for Civil Works what was the status of the

4 special use permit when it was provided to the

5 Standing Rock Sioux Tribe? Was it a final permit

6 effective upon providing it to them or did it

7 require compliance?

8 MS. ZILLOLI: Objection. Legal

9 conclusion.

10 A. I know that it had conditions and

11 requirements that there were issues with. I

12 don't recall today what anybody's conclusion

13 about the legal status at the time was because of

14 those conditions and issues.

15 Q. Earlier you mentioned an individual

16 by the name of Katherine Ferguson; is that

17 correct?

18 A. Yes, you reminded me of her name.

19 Q. Right, right, and you agreed to it?

20 A. Yes.

21 Q. Miss Ferguson I believe you said was

22 the chief of staff of the President's domestic

23 policy council; is that accurate?

24 A. Yes.

25 Q. Did you work with Miss Ferguson on

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1 Crook

2 the development of a map relative to the Corps'

3 property and the Missouri River and the Standing

4 Rock Sioux Tribe within the State of North

5 Dakota?

6 A. I know someone developed a map. I

7 don't remember what my role or her role was in

8 that was, yeah.

9 Q. Okay.

10 And did you do that effort with Miss

11 Ferguson before or after the Corps proposed a

12 special use permit to the Standing Rock Sioux

13 Tribe?

14 MS. ZILLOLI: Objection.

15 Mischaracterizes his testimony.

16 Q. Please correct me where I'm wrong,

17 sir. I apologize, if that's the case.

18 A. I remember generally communicating

19 with her about these issues and, also, she was

20 responsible for coordinating some larger tribal

21 coordinations. I don't remember the specifics or

22 timing of a map.

23 Q. Why did Miss Ferguson want to work

24 with you and the Corps and the creation of a map

25 of that area?

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1 Crook

2 MS. ZILLOLI: Objection. Misstates

3 testimony in evidence, calls for speculation.

4 A. I think you'd to have to ask her

5 what her motivations are.

6 Q. Okay. We can look at some documents

7 in a moment and talk about that further.

8 By the way, putting that aside, do

9 you recall the area involved in the Corps'

10 provision of a proposed special use permit to the

11 Standing Rock Sioux Tribe? What area did that

12 involve?

13 A. I just recall that it was the area

14 of the Corps property near the Cannonball River.

15 Q. But you don't recall which area it

16 involved in that area?

17 A. Today I don't recall specifically

18 which it involved and didn't involve?

19 Q. Okay.

20 Were you part of any discussion with

21 respect to what area to include in the proposal

22 to allow the Standing Rock Sioux Tribe to have a

23 special use permit to be on Corps property? Do

24 you recall what area was discussed for inclusion?

25 A. I recall that there were discussions

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1 Crook

2 about both the area and the condition of the

3 special use permit.

4 Q. And my question then is -- thank you

5 for that because it makes clearer that you were

6 participatory -- what areas were discussed to be

7 included or not included?

8 A. I don't specifically remember the

9 areas that were discussed either way.

10 Q. Do you remember being involved in

11 such discussions though at one time?

12 A. Yes.

13 Q. Who else was involved with you in

14 discussions about what area specifically to

15 authorize in a proposed special use permit to the

16 Standing Rock Sioux Tribe?

17 A. I remember that there were

18 discussions about the special use permit with

19 Colonel Henderson, General Spellmon, General

20 Jackson, Assistant Secretary Darcy and Army

21 counsel.

22 Q. Mr. Schmander?

23 A. Either Mr. Schmander or somebody who

24 reports to him. I don't recall specifically.

25 Q. Okay.

114:21-115:8  
401-402

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<p style="text-align: right;">Page 118</p> <p style="text-align: center;">Crook</p> <p>1 A. He was at meetings about the special</p> <p>2 use permit but -- okay.</p> <p>3 Q. Was Miss Zilloli at all involved in</p> <p>4 those discussions?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Did that proposed special use permit</p> <p>7 include all of the areas where you knew that</p> <p>8 protesters were present on Corps land in</p> <p>9 opposition to the Dakota Access Pipeline?</p> <p>10 A. Again, I don't recall the specific</p> <p>11 location that was either proposed or under</p> <p>12 discussion in the special use permit.</p> <p>13 Q. The question is different though</p> <p>14 than that, sir.</p> <p>15 It's did it include less than all of</p> <p>16 the areas where protesters were present on Corps</p> <p>17 of Engineers property?</p> <p>18 A. I don't recall today.</p> <p>19 Q. Did the Corps of Engineers proposed</p> <p>20 special use permit tender to the Standing Rock</p> <p>21 Sioux Tribe only include plans south of the</p> <p>22 Cannonball River?</p> <p>23 A. Again, I don't recall the specific</p> <p>24 area proposed or not proposed in the special use</p> <p>25</p>	<p style="text-align: right;">Page 120</p> <p style="text-align: center;">Crook</p> <p>1 Q. And that camp that you're referring</p> <p>2 to north of the Cannonball River, would that</p> <p>3 surprise you if that was called or referred to</p> <p>4 commonly as the Oceti Sakowin Camp?</p> <p>5 A. I don't recall that specific name.</p> <p>6 Q. How about do you recall the name --</p> <p>7 A. But I'm not saying it's not.</p> <p>8 Q. Okay.</p> <p>9 A. I'm sorry.</p> <p>10 Q. You just don't know?</p> <p>11 A. I just don't remember today.</p> <p>12 Q. How about do you remember a name of</p> <p>13 Seven Fires Council Camp also known as the Oceti</p> <p>14 Sakowin Camp located on Corps of Engineer</p> <p>15 property north of the Cannonball River?</p> <p>16 A. I recall that they had names for the</p> <p>17 camps but I don't recall the specific names, no.</p> <p>18 Q. Okay.</p> <p>19 So when the Corps tendered a special</p> <p>20 use permit to the Standing Rock Sioux Tribe,</p> <p>21 would it surprise you if that was limited to land</p> <p>22 specified plus or minus 42 acres south of the</p> <p>23 Cannonball River?</p> <p>24 MS. ZILLOLI: Objection. Assumes</p> <p>25</p>
<p style="text-align: right;">Page 119</p> <p style="text-align: center;">Crook</p> <p>1 permit today.</p> <p>2 Q. Do you recall whether the special</p> <p>3 use permit proposed and tendered to the Standing</p> <p>4 Rock Sioux Tribe specifically denied the tribe's</p> <p>5 request for the permit area to include existing</p> <p>6 protest camps located to the north of the</p> <p>7 Cannonball River?</p> <p>8 A. I don't recall what locations were</p> <p>9 in and out of the special use permit that was</p> <p>10 proposed.</p> <p>11 Q. Do you know, Mr. Crook, what is</p> <p>12 referred to as the main camp when people were</p> <p>13 referring to protest camps located on Corps</p> <p>14 property?</p> <p>15 A. I recall that there were two primary</p> <p>16 locations for camps. I don't know which one they</p> <p>17 referred to as the main camp or --</p> <p>18 Q. How about in your recollection of</p> <p>19 the two primary camps, what were their names?</p> <p>20 A. I don't recall.</p> <p>21 Q. Where were they located?</p> <p>22 A. I believe that there was one north</p> <p>23 of the Cannonball River and one or more south of</p> <p>24 the Cannonball River.</p> <p>25</p>	<p style="text-align: right;">Page 121</p> <p style="text-align: center;">Crook</p> <p>1 fact.</p> <p>2 A. It wouldn't surprise me. I don't</p> <p>3 recall the specific area that was proposed to be</p> <p>4 included or not included still.</p> <p>5 Q. Okay.</p> <p>6 My question is why did the Corps</p> <p>7 grant a proposed, not grant, but propose a</p> <p>8 special use permit for a subset of the existing</p> <p>9 protest camps located on its property?</p> <p>10 A. If that's what they did. I know</p> <p>11 that the locations were a subject of discussion.</p> <p>12 I don't remember what dictated the final</p> <p>13 conclusion on that.</p> <p>14 Q. Okay.</p> <p>15 Would you agree that issuing a</p> <p>16 proposed special use permit for a subset of the</p> <p>17 land where protesters were present was an</p> <p>18 authorization for the Oceti Sakowin Camp to</p> <p>19 remain on Corps property?</p> <p>20 MS. ZILLOLI: Objection. Asks for a</p> <p>21 legal conclusion.</p> <p>22 A. Yes, I don't know whether, whatever</p> <p>23 was said to the tribe, that the proposed special</p> <p>24 use permit what -- with the conditions and issues</p> <p>25</p>

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2 it had what the legal conclusion or status of

3 that would be.

4 Q. Mr. Crook, do you agree with me that

5 the Corps of Engineers never issued a final in

6 effect special use permit for occupation or use

7 of any Corps lands --

8 MS. ZILLOLI: Objection. Legal

9 conclusion.

10 Q. -- with respect to that -- pardon

11 me, Miss Zillio. I'm still asking my question.

12 Mr. Crook, I'll start over given that

13 interruption.

14 Do you agree with me that the Corps

15 of Engineers never issued an effective, final

16 special use permit to any protest group or

17 subgroup to be present on Corps of Engineers

18 property during the period of the Dakota Access

19 Pipeline protests?

20 MS. ZILLOLI: Objection. Legal

21 conclusion.

22 A. Again, I don't know the final legal

23 status and whether it was effective or not of the

24 special use permit.

25 Q. Okay.

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1 Crook

2 Did you ever know?

3 A. I don't know. Actually, I know that

4 lawyers had opinions about it, but I don't recall

5 specifically if there was a conclusion.

6 Q. Mr. Crook, you talked about, we can

7 certainly look at it in a moment when we go

8 through some documents together, but you

9 referenced a joint statement by the Department of

10 the Army, the Department of the Interior and the

11 Department of Justice, I think -- September 9th

12 comes to mind. You tell me if I'm wrong -- a

13 joint statement to reconsider the Corps Omaha

14 district granting of two Clean Water Act Section

15 408 permissions for the DAPL, Dakota Access

16 Pipeline, to cross the United States Government

17 flowage easement on the Missouri River at Lake

18 Sakakawea, and the Army Corps of Engineers two

19 verifications, meaning Nationwide Permit 12.

20 Do you recall that?

21 A. I believe that we issued a joint

22 statement in early September. I don't recall the

23 specific date or the specific language in the

24 announcement, but I do recall making an

25 announcement on that generally subject.

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1 Crook

2 Q. Were you, sir, involved in the

3 development of that announcement?

4 A. Yes.

5 Q. And please explain and describe the

6 nature and extent of your involvement in that

7 announcement.

8 A. I was involved in discussions and

9 meetings where it was -- where the agencies

10 decided to issue an announcement, and I reviewed

11 and edited drafts of the announcement.

12 Q. When you had meetings and

13 discussions with the agencies involved in that,

14 and there are three: Army, Justice and Interior,

15 who was present in your meetings or discussions

16 from the Corps?

17 A. I don't recall, I don't recall in

18 the meetings other than the detailee from the

19 Corps to the Department of Interior that I

20 mentioned and I'm still forgetting her last name.

21 I don't recall there being somebody

22 from the Corps of Engineers specifically as

23 opposed to the Department of Army.

24 Q. Okay.

25 If no one was from the Corps, and

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1 Crook

2 that's your testimony, then who from the

3 Department of the Army was present along with you

4 in those meetings and discussions?

5 A. And the secretary --

6 Q. I'm sorry. Pardon me, sir.

7 You were saying the assistant

8 secretary?

9 A. Yes, I'm sorry. Assistant Secretary

10 Darcy, and I believe in some of the discussions

11 Craig Schmander was involved as well.

12 Q. Was that it for the Department of

13 the Army?

14 A. And me.

15 Q. Of course, right.

16 A. That's all I recall from the

17 Department of Army.

18 Q. Okay.

19 And then let's go to the other

20 federal agencies from the administration that

21 were present for those meetings and discussions

22 with respect to the formation of the joint

23 statement that was finalized January -- pardon

24 me, September 9.

25 From the Department of Interior, who

123:6-124:11,  
124:25-125:11,  
125:19-126:18  
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1 Crook

2 was present and participated in discussions?

3 A. I recall Tommy Boudreau, the chief

4 of staff at the time. Hillary Tompkins, the

5 solicitor. I believe one of her deputies or

6 staff, and the detailee I mentioned from the

7 Corps from the interior department.

8 Q. That's it from the interior

9 department?

10 A. That's all I recall being involved

11 from the interior department, yes.

12 Q. Not Miss Jewell, secretary --

13 A. So the initial meeting on this was

14 in her conference room.

15 Q. Whose conference room?

16 A. Secretary's Jewell's conference

17 room, and I just don't recall whether she dropped

18 by or not during part of that.

19 Q. Was she ever involved in the

20 discussions with respect to the development and

21 finalization of the joint statement on September

22 9, 2016? Please.

23 A. I don't recall whether she was

24 specifically involved or not.

25 Q. She provided a conference room for

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1 Crook

2 you to meet but you don't recall if she was

3 present?

4 A. Right. Her staff provided, her

5 chief of staff convened the meeting in her

6 conference room that's in her suite of offices,

7 but I just don't recall whether that specific

8 meeting she participated or not.

9 Q. Do you recall Miss Jewell ever

10 participating in the topic of the issues that

11 lead to the development and finalization of a

12 joint statement representing itself as being from

13 three federal agencies, one which she was

14 secretary of, ever?

15 A. I'm not sure what her direct

16 involvement or lack thereof before the statement

17 was.

18 Q. In any respect?

19 A. Other than I was talking to her

20 chief of staff and her solicitor, but I don't

21 know what they were relaying to her, you know, in

22 addition to my discussions with them.

23 Q. Was it your impression, Mr. Crook,

24 that Mr. Boudreau or Miss Tompkins or the staff

25 were there on their own volition for fun, or were

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1 Crook

2 they there at the direction of Secretary Jewell?

3 MS. ZILLOLI: Objection. Calls for

4 speculation.

5 A. I believe that Secretary Jewell was

6 aware of their general involvement on the issue,

7 but I don't know what specific direction or

8 specifics was given to them.

9 Q. Did Mr. Boudreau or Miss Tompkins

10 behave, in your opinion, as having authority from

11 Secretary Jewell to discuss the matter and to

12 finalize and put the Department of the Interior's

13 name on that joint statement?

14 MS. ZILLOLI: Objection, vague.

15 A. I believe that her chief of staff

16 understood he was acting -- yeah, had authority

17 to sign offer on the joint statement.

18 Q. Authority from Miss Jewell,

19 Secretary of the Interior; is that your point?

20 MS. ZILLOLI: Objection to the

21 extent it calls for a legal conclusion.

22 A. I believe that he, yes, was acting

23 within his authority given his role in the

24 department.

25 Q. And chief of staff to the secretary

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1 Crook

2 of the Interior, is that what his title is?

3 A. Yes, or was, yes.

4 Q. And Miss Tompkins, remind me, you

5 said she was the Solicitor General of the United

6 States Department of the Interior?

7 A. I think it's just called a

8 solicitor, but she's the top lawyer of the

9 Department of the Interior, yes, or was.

10 Q. Okay.

11 You were telling me that there were

12 other agencies participating, mainly the United

13 States Department of Justice, right?

14 A. Yes.

15 Q. And what individuals do you recall

16 ever participating in discussions or meetings

17 concerning the formation and development and

18 finalization of the joint statement to reconsider

19 the Corps' decision?

20 A. It was, I'm sorry, John Cruden, the

21 head of the Environment Natural Resources

22 Division; his deputy, Sam Hirsch and at some

23 point in time Rita Augular, who I don't remember

24 her official title, but she served as a

25 congressional and intergovernmental relations

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-17  
401-  
402,  
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129:11-130:2,  
131:4-10  
401-402

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1 Crook

2 role at the Justice Department.

3 Q. Okay.

4 Anyone else from the United States

5 Department of Justice?

6 A. There may have been other people on

7 the ENRD staff attorneys. I just don't recall

8 beyond the two that I mentioned.

9 Q. And like the Department of the

10 Interior, the Department of Justice has a cabinet

11 official I believe; is that correct?

12 A. An attorney general, yes.

13 Q. An attorney general of the United

14 States?

15 A. Yes.

16 Q. And that individual at the time was

17 whom?

18 I don't mean to trip you up.

19 Loretta Lynch --

20 A. I'm actually blanking right now but

21 I --

22 Q. Would you happen to recall whether

23 the name was Loretta Lynch or not?

24 A. Yes, that was her.

25 Q. Attorney generally of the United

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1 Crook

2 States Loretta Lynch?

3 A. Yes, at that time that was her.

4 Q. Mr. Crook, do you recall Miss Lynch

5 having any involvement direct or indirect in the

6 development and finalization of the joint

7 statement to reconsider the Corps' decisions?

8 A. I have no knowledge of her

9 involvement directly or indirectly with that

10 statement.

11 Q. And like the individuals below, the

12 cabinet level secretary from the Department of

13 the Interior and, frankly, the Department Of

14 Army, were Mr. Cruden, Mr. Hirsh or Miss Auguilar

15 present in those discussions for fun or were they

16 there in their official capacity as officials of

17 the United States Department of Justice?

18 MS. ZILLOLI: Objection, speculation

19 and legal conclusion.

20 Q. What was your perception of their

21 participation in a process that led to the

22 Department of Justice putting its name on a joint

23 statement along with two other United States

24 agencies?

25 A. They represented the Justice

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1 Crook

2 Department at the meetings, and I believe were

3 expressing their views of their division of the

4 Justice Department, and they participated in the

5 drafting and editing of that announcement.

6 Q. Would you say that was an action

7 taken by those DOJ representatives with or

8 without the authority of their positions and the

9 Attorney General Of the United States permission?

10 MS. ZILLOLI: Objection,

11 speculation, foundation, legal conclusion.

12 A. Again, I don't know what discussions

13 they had or didn't have with the attorney

14 general. I had no reason to believe they weren't

15 acting within their authority, but I don't know

16 specifically what direction they were given.

17 Q. Thank you.

18 Did all of the three signators to

19 that joint statement have an active role in its

20 development?

21 A. The people I mentioned were involved

22 in the drafting and editing of that announcement.

23 Q. So that would be all three of those

24 agencies, correct?

25 A. Certain representatives of all three

132:18-  
133:4  
401-402

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1 Crook

2 of the agencies that I mentioned were involved in

3 it, yes.

4 Q. Yes.

5 With respect to your role in that

6 process, you said you edited and met on it and

7 discussed on it.

8 Over the span of what time did that

9 process take place?

10 A. Again, I don't recall the specific

11 dates. I know that it was --

12 Q. Was it a few days?

13 A. Somewhere between a few days to a

14 week or so.

15 Q. That's when that came together, and

16 you met on it and talked about it and exchanged

17 comments from the very beginning of that process

18 to the issuance of the document publicly it took

19 a total of one week?

20 A. Again, I don't recall the specific

21 time frame. I just know that the discussion --

22 Q. Did it take more than a week?

23 A. It could have.

24 Q. During that time in which you and

25 Miss Darcy were involved in that process, did you

133:24-  
134:6,  
136:2-25  
401-402

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2 ever think to coordinate with the people whose

3 decisions you were reversing within the Corps of

4 Engineers?

5 A. During that process I did consult

6 with the Corps of Engineers.

7 Q. And who did you consult with

8 specifically?

9 A. David Cooper, the chief counsel for

10 the Corps of Engineers. I believe some of his

11 staff and General Jackson.

12 Q. And did you do that because Miss

13 Darcy told you to limit your involvement in the

14 Corps to those individuals?

15 A. I don't recall her giving me any

16 instruction like that.

17 Q. So the decision to limit your

18 coordination internal to the United States Army

19 Corps of Engineers to reverse earlier decisions

20 it made only you made the decision only to

21 consult with those two individuals?

22 MS. ZILLOLI: Objection. Assumes

23 facts.

24 A. First of all, that announcement did

25 not reverse the decisions. It announced that

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1 Crook

2 they were being placed under review and --

3 Q. Does that mean that those decisions

4 no longer had the legal effect they did upon

5 issuance?

6 MS. ZILLOLI: Objection. Calls for

7 a legal conclusion and, counsel, please allow the

8 witness to finish his answers.

9 A. I'm sorry. Which question am I

10 answering here?

11 Q. Yes, sir. Let me restate it.

12 So it was -- I'm asking, it sounds

13 as though you're saying that it was your decision

14 as to whom you consulted in the Army Corps of

15 Engineers with respect to the joint statement,

16 development and finalization.

17 A. I would say that I had a general

18 practice of my starting point for coordination

19 with the Corps of Engineers was General Jackson

20 and -- but in this case because they were legal

21 issues involved and there was litigation ongoing,

22 there was also discussions with Army Corps

23 counsel and Army Corps counsel's staff, and that

24 was my general line of communication with the

25 Corps of Engineers on issues like this.

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1 Crook

2 Q. Did it ever occur to you to consult

3 with the individuals in the Corps who made the

4 decisions that your efforts announced a joint

5 statement to reconsider?

6 A. I assumed at the time that my

7 discussions with General Jackson were being

8 relayed through the chain of command.

9 Q. Do you know if that ever occurred?

10 A. I recall that there was a breakdown

11 in communications before the announcement came

12 out.

13 I just recall there was an issue

14 with what was relayed to General Spellmon and

15 Colonel Henderson and the timing of it.

16 Q. So would it surprise you to learn

17 that Colonel Henderson who made the decision with

18 the consent and approval of now General Spellmon

19 were very frustrated with your actions and

20 decision?

21 MS. ZILLOLI: Objection. Assumes

22 facts.

23 A. I remember hearing that they were

24 concerned about being surprised at the

25 announcement.

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-25  
611,  
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1 Crook

2 Q. Mr. Crook, with respect to the

3 thousands of protesters and the eight to nine

4 months they occupied United States property

5 managed by Corps of Engineers, how many Title 36

6 or other citations did the Corps issue to those

7 present on Corps property?

8 A. So, first of all, I don't know the

9 exact number of protesters there were over time,

10 and we've already discussed the time period and

11 what I recall and don't recall about that.

12 Q. With respect to the period of time

13 that you were a United States employee in your

14 capacity as principal deputy to the assistant

15 secretary of the Army for Civil Works, during

16 your tenure, sir, how many citations are you

17 aware the Corps issued to protestors on the Corps

18 of Engineers' property? Any?

19 MS. ZILLOLI: Counsel, again, you're

20 interrupting his answers. I'm going to ask you

21 to please allow him to finish answering his

22 questions. It's becoming a pattern.

23 Q. Mr. Crook, you heard my question?

24 A. I don't know how many citations the

25 Omaha District issued or didn't issue.



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<p style="text-align: right;">Page 138</p> <p style="text-align: center;">Crook</p> <p>1 Q. Did you ever tell anyone, Mr. Crook,</p> <p>2 not to issue citations to the protesters?</p> <p>3 A. I don't recall telling anybody,</p> <p>4 giving any specific directions with recall to</p> <p>5 citations.</p> <p>6 Q. Did Miss Darcy, to your knowledge?</p> <p>7 A. I don't recall her giving any</p> <p>8 specific direction on that either.</p> <p>9 Q. Then why didn't the Corps of</p> <p>10 Engineers issue any citations?</p> <p>11 A. Again, I don't know whether they did</p> <p>12 or didn't or how many. So I certainly</p> <p>13 can't under -- I wouldn't know why because I</p> <p>14 don't know whether.</p> <p>15 Q. To your knowledge, Mr. Crook, did</p> <p>16 the Corps ever take any steps to communicate to</p> <p>17 the protesters present on Corps managed property</p> <p>18 that they needed to leave?</p> <p>19 A. Yes.</p> <p>20 Q. In what form and when?</p> <p>21 A. In the November 25th announcement</p> <p>22 that they needed to leave the north property by</p> <p>23 an X date certain in December.</p> <p>24 Q. How about prior to that, any</p> <p>25</p>	<p style="text-align: right;">Page 140</p> <p style="text-align: center;">Crook</p> <p>1 the protests on Corps property?</p> <p>2 MS. ZILLOLI: Objection. Misstates</p> <p>3 evidence and assumes facts.</p> <p>4 Q. Why don't we hold that, Mr. Crook,</p> <p>5 and I'll show you a document, and you let me know</p> <p>6 if I'm telling you something different than what</p> <p>7 it says.</p> <p>8 A. Okay.</p> <p>9 MS. ZILLOLI: Just, Mr. Seby, I was</p> <p>10 curious if we could take a break soon. I know</p> <p>11 that there was a request made at the outset at a</p> <p>12 time. I think it's coming up.</p> <p>13 MR. SEBY: So let's go off the</p> <p>14 record.</p> <p>15 THE VIDEOGRAPHER: We're off the</p> <p>16 record 1:26 p.m. Eastern, 5:26 UTC.</p> <p>17 (A break from the record was taken.)</p> <p>18 A F T E R N O O N S E S S I O N:</p> <p>19 THE VIDEOGRAPHER: Back on the</p> <p>20 record 2:15 Eastern, 6:15 p.m. UTC.</p> <p>21 BY MR. SEBY:</p> <p>22 Q. Mr. Crook, good afternoon. We're</p> <p>23 back on the record after a lunch break, and I</p> <p>24 want to, for this portion of the deposition,</p> <p>25</p>
<p style="text-align: right;">Page 139</p> <p style="text-align: center;">Crook</p> <p>1 particular -- we talked about mid August is when</p> <p>2 they showed up.</p> <p>3 So what about the months of August,</p> <p>4 September, October, and a large part of November,</p> <p>5 prior to the November 25th letter from Colonel</p> <p>6 Henderson, did the Corps ever tell them that they</p> <p>7 needed to leave?</p> <p>8 A. I know that Colonel Henderson had</p> <p>9 several communications with the tribe, but I</p> <p>10 don't know specifically what he said or didn't</p> <p>11 say during all of those conversations.</p> <p>12 Q. How about to the protesters, any or</p> <p>13 all of them, not just the tribe?</p> <p>14 A. Again, I don't know what specific</p> <p>15 communications Colonel Henderson had with the</p> <p>16 protesters. I just know that he was in</p> <p>17 communication with them.</p> <p>18 Q. Mr. Crook, you can look at a</p> <p>19 document in a moment, but would it surprise you</p> <p>20 that as early as September the poor Omaha</p> <p>21 District which had principal and direct</p> <p>22 involvement with the North Dakota Oahe projects</p> <p>23 where these events were occurring concluded that</p> <p>24 the Standing Rock Sioux Tribe had lost control of</p> <p>25</p>	<p style="text-align: right;">Page 141</p> <p style="text-align: center;">Crook</p> <p>1 review some exhibits with you, which have been</p> <p>2 provided prior to your deposition to your counsel</p> <p>3 prior to the deposition.</p> <p>4 And let's start with Exhibit 406, if</p> <p>5 we could, please. Put that on the screen.</p> <p>6 Miss Hymel.</p> <p>7 MS. HYMEL: I'm having a technical</p> <p>8 difficulty. Give me one second, please.</p> <p>9 MR. SEBY: Sure.</p> <p>10 Q. Okay. If you would go to, Mr.</p> <p>11 Crook, I'm going to show you a series of emails.</p> <p>12 They were produced to us with a cover that looks</p> <p>13 like this but the body of that same to-from,</p> <p>14 sent, attachment subject is all in the next page.</p> <p>15 So would it be okay if we start with</p> <p>16 the actual document versus this cover?</p> <p>17 A. Does the next page have who it's to</p> <p>18 and from? Okay, yes.</p> <p>19 Q. Fully. Yes, it does.</p> <p>20 A. Okay. Great. Can we make it a</p> <p>21 little bigger, my aging eyes.</p> <p>22 Q. We will blow it up and then have you</p> <p>23 look at it.</p> <p>24 A. Great.</p> <p>25</p>



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<p style="text-align: right;">Page 142</p> <p style="text-align: center;">Crook</p> <p>1 MS. ZILLOLI: We're seeing like a</p> <p>2 really skinny window.</p> <p>3 MR. SEBY: She's working on it.</p> <p>4 Rachel, are you able to enlarge that, please, and</p> <p>5 move the document to the center so the whole</p> <p>6 piece is in view, please. There we go.</p> <p>7 Q. Mr. Crook, can you take a moment and</p> <p>8 review that email, which is from you forwarding</p> <p>9 an email below to a series of individuals in the</p> <p>10 Corps, and it's a -- there are several</p> <p>11 attachments we will get to in a moment.</p> <p>12 One is a letter from the acting</p> <p>13 assistant secretary of the interior, Larry</p> <p>14 Williams -- Roberts, pardon me, Larry Roberts to</p> <p>15 the Corps Omaha District and then there's a</p> <p>16 response from the Omaha District Colonel</p> <p>17 Henderson to Mr. Roberts, and General Jackson is</p> <p>18 the email transmitting those to Mr. Roberts that</p> <p>19 you have forwarded on to these other individuals</p> <p>20 in the Corps.</p> <p>21 If you would take a moment and read</p> <p>22 Mr. -- pardon me, General Jackson's email, that</p> <p>23 would be great.</p> <p>24 A. Oh, thank you. I'm still reading it</p> <p>25</p>	<p style="text-align: right;">Page 144</p> <p style="text-align: center;">Crook</p> <p>1 the environmental assessment, and General Jackson</p> <p>2 is sending those to Mr. Roberts because</p> <p>3 apparently Mr. Roberts was not aware of the</p> <p>4 Corps's response; is that your understanding of</p> <p>5 this whole email?</p> <p>6 A. It's -- just from reading the email,</p> <p>7 yes.</p> <p>8 Q. Okay.</p> <p>9 So here Mr. Roberts is taking a</p> <p>10 position on behalf of the Department of the</p> <p>11 Interior in March of 29th of 2016 and the Corps</p> <p>12 responded to it in the June 28, 2016, and General</p> <p>13 Jackson was resending all of that to Mr. Roberts</p> <p>14 on August 8th of 2016, and you were letting</p> <p>15 people know.</p> <p>16 Why did you feel the need to forward</p> <p>17 this letter on to this group of individuals in</p> <p>18 the Corps of Engineers?</p> <p>19 A. This is actually a group of</p> <p>20 individuals in the office of the assistant</p> <p>21 secretary, and the colonel and lieutenant colonel</p> <p>22 were our staff officers in the assistant</p> <p>23 secretary's office. So this is just forwarding</p> <p>24 to other people in my office who work with me.</p> <p>25</p>
<p style="text-align: right;">Page 143</p> <p style="text-align: center;">Crook</p> <p>1 right now.</p> <p>2 Q. You bet.</p> <p>3 A. Okay.</p> <p>4 Q. You've read the email from Major</p> <p>5 Jackson?</p> <p>6 A. From general Jackson, yes.</p> <p>7 Q. Major General Jackson. Pardon me.</p> <p>8 So the attachments are this letter</p> <p>9 of March 29, 2016 from Mr. Roberts, Acting</p> <p>10 Assistant Secretary of Indian Affairs in the</p> <p>11 office of the secretary of the Department of</p> <p>12 Interior, and the letter is giving comment on the</p> <p>13 Corps of Engineers preparations under NEPA, for</p> <p>14 the environmental assessment, and the department</p> <p>15 is through Mr. Roberts' letter asking for an EIS</p> <p>16 to fully evaluate, in his words, "To fully</p> <p>17 evaluate the potential impacts of the DAPL</p> <p>18 pipeline on the Standing Sioux Tribe</p> <p>19 reservation," and he asks as a proxy for the</p> <p>20 tribes that a full environmental impact statement</p> <p>21 be developed; and the next letter is a Corps</p> <p>22 response from Colonel Henderson, District</p> <p>23 Commander Omaha District to to Mr. Roberts</p> <p>24 explaining that the Corps process for developing</p> <p>25</p>	<p style="text-align: right;">Page 145</p> <p style="text-align: center;">Crook</p> <p>1 Q. What was your reason for sending it</p> <p>2 to them?</p> <p>3 A. I don't recall other than I tried to</p> <p>4 keep people in the office generally aware of, you</p> <p>5 know, issues.</p> <p>6 Q. And what was the issue here that you</p> <p>7 thought was necessary to keep them aware of?</p> <p>8 A. Just the exchange between General</p> <p>9 Jackson and Larry Roberts of the interior</p> <p>10 department.</p> <p>11 I don't recall how this email lines</p> <p>12 up with the timing of when the permit was issued</p> <p>13 and when that was announced.</p> <p>14 Q. Which permit are you referring to?</p> <p>15 A. I mean, all the permits for the</p> <p>16 Dakota Access Pipeline, the 408 or 404 or</p> <p>17 nationwide permits that were invoked for it.</p> <p>18 Q. Well, General Jackson's email</p> <p>19 advises that information, doesn't it? It says</p> <p>20 that I think he's telling Mr. Roberts that he</p> <p>21 bumped into him at a meeting this past Friday he</p> <p>22 says. So he writes us on Monday, August 8th, and</p> <p>23 says "This past Friday we met and you gave me a</p> <p>24 copy of the letter you sent to the Corps at the</p> <p>25</p>

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402

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<p style="text-align: right;">Page 146</p> <p>1 Crook</p> <p>2 end of March, and you said you hadn't received</p> <p>3 the response."</p> <p>4 So here's what the Corps sent you is</p> <p>5 what Jackson says, and then he says as an update</p> <p>6 the 408 permit from the Corps for the Lake Oahe</p> <p>7 crossing has been granted along with the</p> <p>8 nationwide permit 12 that was also required was</p> <p>9 issued, and there's an outstanding real estate</p> <p>10 easement at Lake Oahe that's spending. And, so</p> <p>11 let me know if you need any other questions</p> <p>12 answered. That's what Jackson's letter says.</p> <p>13 So you wanted your colleagues in the</p> <p>14 office of the secretary to be aware of that, the</p> <p>15 assistant secretary, Miss Darcy, to be aware of</p> <p>16 that?</p> <p>17 A. I didn't forward it to Miss Darcy</p> <p>18 and I don't remember when I discussed it with</p> <p>19 her, and I guess what I'm saying is I don't, I</p> <p>20 don't know -- I don't know if I was just</p> <p>21 forwarding the fact of this exchange with the</p> <p>22 interior department or if General Jackson's</p> <p>23 statement that the permits were granted was news</p> <p>24 to me on that Monday, and I was forwarding it for</p> <p>25 that reason as well. I just don't recall.</p>	<p style="text-align: right;">Page 148</p> <p>1 Crook</p> <p>2 A. I believe before this time period it</p> <p>3 was a meeting on another subject that was not</p> <p>4 DAPL.</p> <p>5 Q. Okay. All right.</p> <p>6 So let's go to Exhibit 407, which</p> <p>7 I'm bringing to your attention because the first</p> <p>8 email in the chain, what this is is two emails in</p> <p>9 a chain.</p> <p>10 The first is Lieutenant Tedeschi,</p> <p>11 who's a chief in the U.S. Corps Operations Center</p> <p>12 Headquarters, Washington, D.C., and he's</p> <p>13 forwarding an email with an attachment to a group</p> <p>14 which the email -- I'm sorry. His email was</p> <p>15 forwarded by one of the recipients, Miss Karen</p> <p>16 Durham Auguilera, and she forwarded it on to Miss</p> <p>17 Darcy and Chief of Engineers Todd Semonite and</p> <p>18 Major General Jackson, among others, which</p> <p>19 includes you.</p> <p>20 Do you see that? You're in the cc</p> <p>21 list?</p> <p>22 A. Yes, I see that I'm on the cc for</p> <p>23 Assistant Secretary Darcy's response.</p> <p>24 Q. And she says thank you, thank you</p> <p>25 all for the update, and the update that's being</p>
<p style="text-align: right;">Page 147</p> <p>1 Crook</p> <p>2 Q. All right.</p> <p>3 Is Mr. Roberts someone that you knew</p> <p>4 prior to this email from General Jackson on</p> <p>5 August 8th?</p> <p>6 A. I believe I had met him prior to the</p> <p>7 email. I didn't know him well before this time</p> <p>8 period.</p> <p>9 Q. Had you spoken to him or worked with</p> <p>10 him on any DAPL issue?</p> <p>11 A. I don't believe before this that I</p> <p>12 had spoken with him about a DAPL issue. I</p> <p>13 believe General Jackson and I met with him about</p> <p>14 something else before this.</p> <p>15 Q. Okay.</p> <p>16 And when was that meeting?</p> <p>17 A. I don't recall. Just at some point</p> <p>18 between when I joined the Corps in 2015 and</p> <p>19 before this August time period.</p> <p>20 Q. And your meeting with him, with</p> <p>21 General Jackson pertained to the DAPL issues?</p> <p>22 A. No, I think, I think it was another</p> <p>23 issue that was not on DAPL. I just don't recall</p> <p>24 what the issue is or was.</p> <p>25 Q. But you're certain it wasn't DAPL?</p>	<p style="text-align: right;">Page 149</p> <p>1 Crook</p> <p>2 forwarded to her from Miss Auguilera is a -- she</p> <p>3 says it's the first storyboard attached for the</p> <p>4 Dakota Access Pipeline Issue, and the Corps Omaha</p> <p>5 District and the Northwest Division put it</p> <p>6 together, and we intend to generate these daily</p> <p>7 and get them distributed. Thanks to Cornell</p> <p>8 Henderson for his commander's assessment.</p> <p>9 So let's look at the attachment,</p> <p>10 which is that story board that is the matter of</p> <p>11 communication.</p> <p>12 Oh, geez, it's not here. Okay. The</p> <p>13 exhibit is not complete. So let's go instead to</p> <p>14 -- I take that back. The exhibit that I want to</p> <p>15 talk to you about, this first storyboard, is</p> <p>16 actually Exhibit 408, if we could move that</p> <p>17 forward.</p> <p>18 MR. SEBY: So if we could look at</p> <p>19 the email first, Rachel, the email transmitting</p> <p>20 that attachment.</p> <p>21 Q. Mr. Crook, this is a single email</p> <p>22 from Michael James or James Michael Price in the</p> <p>23 Corps headquarters for the assistant secretary to</p> <p>24 you, and can you tell me who Mr. Price is.</p> <p>25 A. He was the commanding officer for</p>

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1 our office that would do tours as XO or chief

2 commanding officer. So he's the top active duty

3 military person that was serving in our office

4 under Secretary Darcy, Assistant Secretary Darcy.

5 Q. Okay.

6 And he is sending you a, what looks

7 to be a draft. It references the attached

8 storyboard of August 24, 2016, which we'll talk

9 about in a moment, but what -- can you explain

10 this email. You're copied on it.

11 What do you recall this being?

12 A. Give me a second to read the rest of

13 it.

14 Q. Yeah, absolutely.

15 A. If you don't mind. Can you scroll

16 up just a little bit. Great. Okay.

17 Q. So do you recall this, Mr. Crook?

18 A. I don't recall it specifically.

19 Q. What is this a draft of?

20 A. It's a draft report to the secretary

21 of the Army on the situation regarding Dakota

22 Access Pipeline.

23 Q. Okay.

24 So Mr. or Colonel Price sends this

25

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1 to you and says, sir, for your consideration I've

2 also included the place mat.

3 What's a place mat?

4 A. It's generally an 11x17 document

5 that the Army and the Army Corps specifically

6 likes to produce to provide information on

7 projects or issues.

8 Q. So is that another way of referring

9 to the storyboard that's attached?

10 A. I believe so, yes.

11 Q. Okay.

12 So who wrote this, the body of this

13 message that Colonel Price is sending to you

14 exclusively? Did he put it together or somebody

15 else?

16 MS. ZILLOLI: Objection. Calls for

17 speculation.

18 A. I mean, it looks like his wrote it.

19 Q. Okay.

20 And did you have any comments or

21 concerns with it?

22 A. I don't recall specifically. I

23 don't recall specifically whether I had edits or

24 what I did with it.

25

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1 Q. You do recall reading it though,

2 right?

3 A. Now that looking at it, it's

4 refreshed my recollection that at some point we

5 did try to provide an update to the secretary.

6 Q. Who's we?

7 A. Our office, the office of the

8 assistant secretary.

9 Q. Okay.

10 So you were being asked for your

11 consideration of this; is that correct?

12 A. Yes. That's what it says.

13 Q. Okay.

14 Reading it again today, do you have

15 any reason today to doubt anything in this email

16 that you're reading?

17 A. Yes.

18 Q. What is it?

19 A. The characterization of the

20 easements in the first paragraph may not have

21 been exactly correct.

22 Q. Why not?

23 A. It said one gave consent to, sorry.

24 My picture is covering part of the line. If you

25

**ND OBJ.:**  
Introduces  
new material

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1 could scroll down just at little bit or up a

2 little bit. Okay.

3 It said we provided an easement, and

4 I think the easement had not been provided yet at

5 that time actually.

6 Q. Okay.

7 Other than that, Mr. Crook, and, in

8 particular, the fourth full paragraph, protesters

9 are currently camping, and so the date of Colonel

10 Price's email is August 25 of 2016.

11 So you're being advised, at least to

12 my knowledge, for the first time on August 25,

13 "Protesters are currently camping on Corps

14 property south of pipeline construction site,

15 activity has been fairly quiet since construction

16 ceased and law enforcement has pulled back to

17 containment checkpoints. The SRST, Standing Rock

18 Sioux Tribe, has submitted a special use

19 to camp on Corps property. The Omaha D

20 processing the permit."

21 Is this the first time you were

22 advised of protesters on Corps property? I had

23 asked you earlier and you didn't know.

24 A. So it looks like it was around this

25

**ND OBJ.:**  
Introduces  
new material

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<p style="text-align: right;">Page 154</p> <p style="text-align: center;">Crook</p> <p>1 time period that I was advised. I don't know</p> <p>2 that this draft email to the secretary was the</p> <p>3 first time I heard about it, but it would have</p> <p>4 been in this general time period.</p> <p>5</p> <p>6 Q. Okay. Let's have a look at the</p> <p>7 attachment to this document of this exhibit,</p> <p>8 which is a Dakota Access Pipeline protest, Corps</p> <p>9 Northwest Division and Northwest District.</p> <p>10 So is this Omaha and the Northwest</p> <p>11 Division reporting on the storyboard known as a</p> <p>12 place mat you've said, and if you look down it</p> <p>13 says in the last 24 hour section of this</p> <p>14 document, there are a number of bullets.</p> <p>15 So if you would come down, please,</p> <p>16 to the third bullet. Pardon me. Let's look at</p> <p>17 them all.</p> <p>18 The last 24 hours, bullet one,</p> <p>19 "Protester camps on Corps property. South of</p> <p>20 pipeline construction site continues to be</p> <p>21 occupied. Continues. Activity has been fairly</p> <p>22 quiet, et cetera. Current estimates from law</p> <p>23 enforcement places the camps at 500 to 2000</p> <p>24 protesters with many protesters traveling to the</p> <p>25 site during the day.</p>	<p style="text-align: right;">Page 156</p> <p style="text-align: center;">Crook</p> <p>1 Some of the facts that are described</p> <p>2 in this document, and the details were likely</p> <p>3 news to me.</p> <p>4</p> <p>5 Q. Like which?</p> <p>6 A. Like the number of protesters, yes.</p> <p>7 I think that to be the main detail that would</p> <p>8 have been news to me.</p> <p>9 Q. So that 500 and 2000 estimate, what</p> <p>10 did you think it was prior to learning this?</p> <p>11 A. I don't think I knew a number. I</p> <p>12 just knew that there was protesters that were</p> <p>13 there.</p> <p>14 Q. And the number was news to you that</p> <p>15 day?</p> <p>16 A. It was news to me on/or around this</p> <p>17 day. Again, I don't know if this specific</p> <p>18 document or if I was told something shortly</p> <p>19 before the document but around this time period</p> <p>20 that would have been news to me.</p> <p>21 Q. Okay.</p> <p>22 So in the third bullet, Standing</p> <p>23 Rock Sioux Tribe special use permit lacked</p> <p>24 required information for approval.</p> <p>25 Was that news to you?</p> <div style="border: 1px solid red; padding: 2px; margin-top: 5px;"> <p><b>ND OBJ.:</b> Introduces new material</p> </div>
<p style="text-align: right;">Page 155</p> <p style="text-align: center;">Crook</p> <p>1 "Third bullet. Standing Rock Sioux</p> <p>2 Tribe special use permit lacked required</p> <p>3 information for approval. NWO will request</p> <p>4 additional information."</p> <p>5</p> <p>6 So is this the first time, now that</p> <p>7 you're refreshed, all of this was news to you on</p> <p>8 this day?</p> <p>9 A. I don't know whether this particular</p> <p>10 document on this particular day was news to me.</p> <p>11 I know that around this time period is when I</p> <p>12 became aware of what's being described in this</p> <p>13 document.</p> <p>14 Q. So here you're told on at least</p> <p>15 August 25, 2016 there may be 2000 people on your</p> <p>16 property.</p> <p>17 What did you think?</p> <p>18 A. What do I think?</p> <p>19 Q. Yes.</p> <p>20 How did you react to this? Oh, my</p> <p>21 gosh. I just learned that there's 2000 people on</p> <p>22 Corps property or did you know this already?</p> <p>23 A. I likely knew that there were some</p> <p>24 protests around the time this document was</p> <p>25 prepared.</p>	<p style="text-align: right;">Page 157</p> <p style="text-align: center;">Crook</p> <p>1 A. As with the others, I don't know if</p> <p>2 I was told shortly beforehand something or saw a</p> <p>3 different document, but, again, it would have</p> <p>4 been something I learned around this time period.</p> <p>5</p> <p>6 Q. So can we agree that at least as of</p> <p>7 this date you knew this?</p> <p>8 A. I believe that I did review this</p> <p>9 document and, therefore, you know, had read this</p> <p>10 information at this time, yes.</p> <p>11 Q. Okay.</p> <p>12 So that clears up your earlier</p> <p>13 testimony about not recalling anything, right?</p> <p>14 A. About not recalling specific time</p> <p>15 periods.</p> <p>16 Q. Sure.</p> <p>17 But now we have a specific time</p> <p>18 period, at least was a date on which you knew</p> <p>19 something now, and you may have known something</p> <p>20 about it earlier but for sure you know it now is</p> <p>21 what you're saying?</p> <p>22 A. I believe that I saw this document</p> <p>23 and so was aware of what it described, on the</p> <p>24 date of the document.</p> <p>25 Q. Okay.</p>

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2 And can we agree that the document

3 that we are talking about is a Corps of

4 Engineers' storyboard dated August 24, 2016?

5 A. That's what it appears to be from

6 the face of the document, yes.

7 Q. Okay.

8 So let's go now to Exhibit 410,

9 please, and there we go.

10 So this email is an email from your

11 boss, Jo-Ellen Darcy, Assistant Secretary of the

12 Army for Civil Works to the secretary of the

13 United States Army, Eric Fanning, dated

14 August 26, the next day. It says update on

15 Dakota Access Pipeline issues, and there's two

16 copies on this. One is to you.

17 Do you see that?

18 A. Yes.

19 Q. So the day prior to the assistant

20 secretary briefing her boss, what information did

21 you provide to your boss on the draft that was

22 sent to you the prior day?

23 A. This appears to be some, you know,

24 follow-on version of the draft that Colonel Price

25 said to me. I don't recall what, if any, edits,

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2 specific edits I made to it before the assistant

3 secretary setup.

4 Q. Okay.

5 Will you have a look at this email

6 and refresh your memory of it. I know you're

7 copied on it, but I just want you to be clear on

8 what you received on August 26, 2016 from your

9 boss briefing her boss, the secretary of the

10 United States Army.

11 A. Okay. Can you scroll down. Can you

12 scroll down a little bit more, please, yes.

13 Okay.

14 Q. Mr. Crook, I know you are an

15 attorney, correct?

16 A. Yes.

17 Q. Your employment at this time with

18 the Army Corps of Engineers, were you employed in

19 the capacity to serve to provide legal advice?

20 A. No.

21 Q. Was Alex Wagner an attorney who

22 provided legal advice to the department?

23 A. Alex was the secretary of the Army's

24 chief of staff. I don't recall whether he was an

25 attorney, is an attorney or not, but he also was

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2 not serving in a legal role.

3 Q. Is Miss Darcy an attorney?

4 A. No.

5 Q. Is secretary Eric Fanning, Secretary

6 of the United States Army?

7 A. No.

8 Q. Where is the attorney on this email?

9 A. Can you scroll up, please. I don't

10 see an attorney on the email.

11 Q. Okay.

12 I just asked because I don't know

13 why there's a redacted portion in here.

14 Anyhow, so you were given advanced

15 draft of this by an individual in your office and

16 the assistant secretary's office.

17 Whatever, if any, input you

18 provided, Miss Darcy the following day gave this

19 email to her boss, the Secretary of the United

20 States Army.

21 Do you have any reason today to

22 disagree with anything she told the secretary?

23 A. Can you scroll down a little bit

24 again.

25 No, I have no reason to disagree

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2 with this email.

3 Q. Okay.

4 Now I want to talk to you about --

5 thank you for that clarification. The third

6 paragraph, Army Corps responsible for permitting.

7 Among the facts that Miss Darcy is

8 reporting to the secretary of the Army is that

9 what the Corps did with respect to granting the

10 "Bulk of the permits required for the Corps

11 project crossings," and then she recounts that

12 within days after that, "The Standing Rock Sioux

13 Tribe sued the Army claiming violations of the

14 National Historic Preservation Act and the

15 National Environmental Policy Act and sought an

16 injunction, and they," referring to the Standing

17 Rock Sioux Tribe, "Also began protest near the

18 site of a planned Lake Oahe crossing, and that

19 the protests have grown to approximately 1500

20 people."

21 Mr. Crook, a day prior an estimate

22 was provided that said 500 to 2000. So do you

23 know why the secretary a day later was able to

24 offer a precise number that is at the upper end

25 of the estimate provided a day prior?

**ND OBJ.:**  
Relevance

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<p style="text-align: right;">Page 162</p> <p style="text-align: center;">Crook</p> <p>1 A. No, I don't know specifically why it</p> <p>2 changed.</p> <p>3 Q. All right. Thank you.</p> <p>4 And then the briefing to the</p> <p>5 Secretary of the United States Army also says</p> <p>6 "They prompted, meaning again the Standing Rock</p> <p>7 Sioux Tribe it, at least according to Assistant</p> <p>8 Secretary Darcy, "Prompted the North Dakota</p> <p>9 Governor to declare a state of emergency on</p> <p>10 August 19"; and on August 20, "they," again, she</p> <p>11 seems to be referring to the Standing Rock Sioux</p> <p>12 Tribe, caused pipeline construction to stop on</p> <p>13 private land.</p> <p>14 Then the next paragraph talks about</p> <p>15 some of the protesters are currently camping on</p> <p>16 Corps property south of pipeline construction.</p> <p>17 She seems to be repeating the</p> <p>18 information that's in the storyboard she received</p> <p>19 a day prior and talking about the protests have</p> <p>20 effectively blocked access to three locally</p> <p>21 managed Corps recreation areas, and then she goes</p> <p>22 on to say on Monday evening, this briefing to the</p> <p>23 secretary is Friday August 26th.</p> <p>24 So a reasonable, I think, unless you</p> <p>25</p>	<p style="text-align: right;">Page 164</p> <p style="text-align: center;">Crook</p> <p>1 "The Governor is also concerned that</p> <p>2 outside groups and agitators will be joining the</p> <p>3 protesters growing the number and increasing the</p> <p>4 volatility of the situation."</p> <p>5 So you were copied on an email draft</p> <p>6 of which you saw the day before, had some input</p> <p>7 you said. You see it again here and her message</p> <p>8 is finalized, and you've told me you don't</p> <p>9 disagree with any of this.</p> <p>10 So when Miss Darcy is talking about</p> <p>11 federal, state and local law enforcement have</p> <p>12 counseled a strategy of containment, are you sure</p> <p>13 about that with respect to North Dakota and what</p> <p>14 she goes on to say the Governor has expressed?</p> <p>15 A. Okay. So that's kind of two</p> <p>16 questions, right. Am I sure about what law</p> <p>17 enforcement counseled and then also what the</p> <p>18 Governor expressed?</p> <p>19 Q. I apologize. Let's break them into</p> <p>20 parts.</p> <p>21 The question is, who counseled the</p> <p>22 strategy of containment versus confrontation?</p> <p>23 A. I don't know specifically. This</p> <p>24 would have been based on reports that came up</p> <p>25</p>
<p style="text-align: right;">Page 163</p> <p style="text-align: center;">Crook</p> <p>1 disagree with me, a reasonable reading of this</p> <p>2 she's referring to the prior Monday.</p> <p>3 Can we agree on that?</p> <p>4 A. It appears to be so.</p> <p>5 Q. On "Monday evening the Standing Rock</p> <p>6 Sioux Tribe submitted a special use permit</p> <p>7 application to camp on 'Corps property'."</p> <p>8 Skipping a sentence. "The Omaha District has</p> <p>9 told the tribe it needs to provide additional</p> <p>10 information before a permit decision can be made.</p> <p>11 Governor Dalrymple has contacted our district</p> <p>12 commander in Omaha," I believe that's Colonel</p> <p>13 Henderson, "and me, Miss Darcy, to request that</p> <p>14 we deny the permit and not allow the protesters</p> <p>15 to remain indefinitely on Corps property."</p> <p>16 And then Miss Darcy goes on to say,</p> <p>17 "We have explained that we are deferring to</p> <p>18 federal, state and local law enforcement in the</p> <p>19 region, who to date have counseled a strategy of</p> <p>20 containment rather than confrontation. The</p> <p>21 governor, however, is becoming increasingly</p> <p>22 concerned about the protests impact on the</p> <p>23 pipeline's construction timeline," and she talks</p> <p>24 about some services the state was providing.</p> <p>25</p>	<p style="text-align: right;">Page 165</p> <p style="text-align: center;">Crook</p> <p>1 through the chain of command through the Corps</p> <p>2 from Omaha. So I don't know specifically who</p> <p>3 that's referring to.</p> <p>4 Q. Okay.</p> <p>5 But you do see where it says</p> <p>6 "Governor Dalrymple has contacted our Omaha</p> <p>7 District commander and me."</p> <p>8 So Governor Dalrymple picked up the</p> <p>9 phone and talked to Miss Darcy, and then she goes</p> <p>10 on to say that a group of entities counseled that</p> <p>11 we do something.</p> <p>12 And now you're saying you don't know</p> <p>13 who said -- who counseled it, and it came up from</p> <p>14 Omaha, but she says that she heard from the</p> <p>15 governor directly, and then she goes on to say</p> <p>16 the governor is very concerned and, in fact, by</p> <p>17 this time the governor had issued an emergency</p> <p>18 declaration.</p> <p>19 Do you think Miss Jewell, pardon me,</p> <p>20 Darcy just got it wrong?</p> <p>21 A. What are you referring to as "it"</p> <p>22 that she got wrong?</p> <p>23 Q. That North Dakota and/or local law</p> <p>24 enforcement said oh, no. Don't worry. We'll</p> <p>25</p>



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<p style="text-align: right;">Page 166</p> <p>1 Crook</p> <p>2 just keep an eye on them and contain them. Seems</p> <p>3 to me a gross mischaracterization.</p> <p>4 I don't know if you have any comment</p> <p>5 on that or not. I just thought I would ask your</p> <p>6 opinion. I don't want to waste time further.</p> <p>7 So let's move on to Exhibit 411,</p> <p>8 please. This will be quick. There we go.</p> <p>9 So, well, this is a calendar invite</p> <p>10 from Miss Darcy to a number of Corps of Engineers</p> <p>11 individuals, and I see it references you. So I'm</p> <p>12 going to ask you about this.</p> <p>13 And she's inviting everybody, the</p> <p>14 recipients, required attendees includes yourself,</p> <p>15 and the subject on the calendar invite is DAPL</p> <p>16 meeting with DOI.</p> <p>17 Is that the Department of the</p> <p>18 Interior?</p> <p>19 A. Yes, that would refer to the</p> <p>20 Department of the Interior.</p> <p>21 MR. SEBY: Rachel, if we could go to</p> <p>22 the next page, please. There we go.</p> <p>23 Q. So the meeting date is September 6,</p> <p>24 right.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 168</p> <p>1 Crook</p> <p>2 A. And, again, Craig Schmauder may have</p> <p>3 joined as well.</p> <p>4 Q. Sure, also from the Corps.</p> <p>5 A. And Colonel Vale, who is, you know,</p> <p>6 the uniform staff assistant in the office at the</p> <p>7 time tended to accompany Miss Darcy, Assistant</p> <p>8 Secretary Darcy when she went to meetings off</p> <p>9 site.</p> <p>10 Q. So Miss Darcy sent the calendar</p> <p>11 notice to you and these other individuals from</p> <p>12 the Corps.</p> <p>13 Who requested the meeting?</p> <p>14 A. I don't recall who requested it.</p> <p>15 MR. SEBY: If you scroll down,</p> <p>16 please, Rachel, to the bottom of this, right</p> <p>17 there. That's adequate.</p> <p>18 Q. There's a note attached to the</p> <p>19 calendar invite that Miss Darcy appears to have</p> <p>20 cut and pasted into the calendar invite and it's</p> <p>21 from Molly Click.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it says special assistant to</p> <p>25 Secretary Jewell.</p>
<p style="text-align: right;">Page 167</p> <p>1 Crook</p> <p>2 A. Can you make it a little bigger,</p> <p>3 please. Yes, thank you.</p> <p>4 That's what it appears to show, oh,</p> <p>5 yes.</p> <p>6 Q. Okay.</p> <p>7 And that address that's on that the</p> <p>8 location, DOI 1849 C Street Northwest, that's the</p> <p>9 Department of Interior headquarters, is it not?</p> <p>10 A. Yes, that is the address of the</p> <p>11 Department of Interior Headquarters.</p> <p>12 Q. Okay.</p> <p>13 And I look at the required</p> <p>14 attendees, and I don't see any Department of</p> <p>15 Interior individuals copied on this.</p> <p>16 Do you?</p> <p>17 A. No, I don't.</p> <p>18 Q. So who did you meet with?</p> <p>19 A. This would have been the time period</p> <p>20 and -- of the meeting I referred to earlier with</p> <p>21 the Department of the Interior and</p> <p>22 representatives from the Department of Justice.</p> <p>23 Q. So it was a Department of Interior,</p> <p>24 DOJ and Assistant Secretary Darcy and you</p> <p>25 meeting?</p>	<p style="text-align: right;">Page 169</p> <p>1 Crook</p> <p>2 That's the Secretary of the United</p> <p>3 States Department of Interior?</p> <p>4 A. Yes, she was secretary at the time.</p> <p>5 Q. Why is that on here?</p> <p>6 MS. ZILLOLI: Objection. Calls for</p> <p>7 speculation.</p> <p>8 Q. It's a question.</p> <p>9 A. Molly Click, this refreshes my</p> <p>10 recollection, I mean, she worked for Secretary</p> <p>11 Jewell at the time.</p> <p>12 Q. Okay.</p> <p>13 Do you think Secretary Jewell and</p> <p>14 Miss Darcy collaborated on setting this meeting</p> <p>15 up on September 9, 2016?</p> <p>16 MS. ZILLOLI: Objection.</p> <p>17 Speculation.</p> <p>18 A. You know, this refreshes my</p> <p>19 recollection. I want to go back and correct</p> <p>20 something that I said earlier.</p> <p>21 Q. Sure.</p> <p>22 A. This appears to be a meeting with</p> <p>23 legal representatives of the energy transfer</p> <p>24 partners and not a meeting that I was thinking of</p> <p>25 with the Department of Justice and the Department</p>

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<p style="text-align: right;">Page 170</p> <p style="text-align: center;">Crook</p> <p>1 of the Interior.</p> <p>2</p> <p>3 Q. Are you sure about that?</p> <p>4 A. Can you, sorry. My screen is sort</p> <p>5 of blocking some of the text of the email. Can</p> <p>6 you scroll down a little bit. Okay.</p> <p>7 Yes, I believe this is referring to</p> <p>8 a meeting that we had with representatives of</p> <p>9 Energy Transfer Partners at the Department of the</p> <p>10 Interior.</p> <p>11 Q. Okay.</p> <p>12 If we could go to Exhibit 412 and</p> <p>13 the attachment to the exhibit, please.</p> <p>14 Please read the next page, which is</p> <p>15 just a short email, again, from Lieutenant</p> <p>16 Tedeschi sending to Miss Darcy and you among</p> <p>17 other cc groups: "Ma'am, here's the latest Corps</p> <p>18 storyboard for the DAPL issue."</p> <p>19 The DAPL storyboard according to</p> <p>20 this email is dated September 6th.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 And then if we go to the storyboard</p> <p>25 itself, it's dated, indeed, September 26, 2016,</p>	<p style="text-align: right;">Page 172</p> <p style="text-align: center;">Crook</p> <p>1 special use permit for the camps pending</p> <p>2 additional needed information from the SRST</p> <p>3 regarding the size of the crowd, precise</p> <p>4 locations and liability insurance.</p> <p>5</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 So do you have any reason to dispute</p> <p>10 that what this says is not accurate? There was</p> <p>11 no special use permit because there were</p> <p>12 questions that persisted in terms of the Standing</p> <p>13 Rock's application?</p> <p>14 Do you agree with me, that's what it</p> <p>15 says?</p> <p>16 A. I have no reason to dispute that.</p> <p>17 Q. Okay.</p> <p>18 So Exhibit 413, please. Would you</p> <p>19 skip this email. It's a series of emails you've</p> <p>20 exchanged. I think it started with one you were</p> <p>21 sent from Miss Tara Billingsley, who by her</p> <p>22 signature block identifies herself as Special</p> <p>23 Assistant to the President, the White House.</p> <p>24 Do you see that at the very bottom?</p> <p>25 A. I don't see it yet. I know that she</p>
<p style="text-align: right;">Page 171</p> <p style="text-align: center;">Crook</p> <p>1 and if we look at the storyboard broken into</p> <p>2 three sections.</p> <p>3</p> <p>4 The first one is the situation and</p> <p>5 the next one is, well, the situation talks about</p> <p>6 the protests apparently as of September 6th, the</p> <p>7 protest is an approximate size of 1500 people</p> <p>8 camping on Corps property in protest of the</p> <p>9 Dakota Access Pipeline, and then in the section</p> <p>10 below that called last 72, I think the Corps is</p> <p>11 referring to the last 72 hours.</p> <p>12 Would you agree with me?</p> <p>13 A. Okay, yes, that would be the last 72</p> <p>14 hours.</p> <p>15 Q. Thank you.</p> <p>16 And if we look at the bullets under</p> <p>17 the last 72 hours section, it notes bullet number</p> <p>18 3 "That the tribe, Standing Rock Tribe, filed a</p> <p>19 request for a temporary restraining order. A</p> <p>20 hearing was set and they want to halt</p> <p>21 construction. Is there a requested relief?"</p> <p>22 The Corps did not take a position on</p> <p>23 the TRO, and then the fifth bullet, the Northwest</p> <p>24 District has not, and not is in full capitol</p> <p>25 letters, do you see that, has not issued a</p>	<p style="text-align: right;">Page 173</p> <p style="text-align: center;">Crook</p> <p>1 was.</p> <p>2</p> <p>3 Q. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. "Hi, Lowry, can you tell me how</p> <p>6 Senator's Heitkamp's office is being informed of</p> <p>7 this afternoon's announcement?"</p> <p>8 And the date of Miss Billingsley's</p> <p>9 email to you from the White House, Special</p> <p>10 Assistant to the President of the United States</p> <p>11 is dated September 9.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And she says this afternoon's</p> <p>15 announcement.</p> <p>16 Just -- it's not a trick. I'm going</p> <p>17 to have you read the whole thing but, at this</p> <p>18 point, do you recall what the September 9,</p> <p>19 afternoon announcement is?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 So let's keep going then up the</p> <p>23 chain. You responded to her, and I think this</p> <p>24 flow of emails just asking how Senator Heitkamp,</p> <p>25 who is at the time a United States Senator from</p>

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<p style="text-align: right;">Page 174</p> <p style="text-align: center;">Crook</p> <p>1 the State of North Dakota, correct?</p> <p>2 A. Yes.</p> <p>3 Q. I think the White House from the</p> <p>4 Office of the President is just asking how she</p> <p>5 got briefed on the September 9th announcement</p> <p>6 that we'll talk about here in a moment, right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay, if we could go to, please,</p> <p>9 Exhibit 414. Next, page, please.</p> <p>10 MR. SEBY: If you could scroll down</p> <p>11 to so that Mr. Crook can read the very beginning.</p> <p>12 Q. So this is from the office of public</p> <p>13 affairs, and do you happen to know what office of</p> <p>14 public affairs this is coming from?</p> <p>15 A. Let me finish reading this. Just a</p> <p>16 sec.</p> <p>17 Where do you see department of</p> <p>18 public affairs? Is it down lower?</p> <p>19 Q. Yes, very bottom, sir.</p> <p>20 A. Okay. I believe that that's the</p> <p>21 Department of Justice Office of Public Affairs.</p> <p>22 Q. Okay. This is the statement, the</p> <p>23 joint statement.</p> <p>24 Do you need to read it? If so, take</p> <p>25</p>	<p style="text-align: right;">Page 176</p> <p style="text-align: center;">Crook</p> <p>1 Dakota, right?</p> <p>2 A. I think I forwarded it to her staff</p> <p>3 member Tracy.</p> <p>4 Q. Yes, yes, sure enough.</p> <p>5 And, in fact, your statement to Miss</p> <p>6 Sutton, Tracy Sutton, "We wanted to make you and</p> <p>7 the senator, make sure you and the Senator had a</p> <p>8 copy of the administration's statement."</p> <p>9 Do you see where you said that?</p> <p>10 A. Can you scroll up? I can't see my</p> <p>11 email right now.</p> <p>12 Q. You bet. We're getting there.</p> <p>13 Right there.</p> <p>14 A. Yes.</p> <p>15 Q. The administration's statement on</p> <p>16 the decision today, right?</p> <p>17 A. Yes.</p> <p>18 Q. So you're letting her know that</p> <p>19 that's the administration's statement and -- on</p> <p>20 these issues.</p> <p>21 So if we could go to the Exhibit</p> <p>22 415. The email -- this exhibit is a chain of</p> <p>23 emails. It starts again with a daily DAPL</p> <p>24 update, Mr. or colonel, Lieutenant Colonel</p> <p>25</p>
<p style="text-align: right;">Page 175</p> <p style="text-align: center;">Crook</p> <p>1 a moment and do it. It's dated September 9,</p> <p>2 immediate release, 2016, joint statement from the</p> <p>3 Department of Justice, the Department of Army,</p> <p>4 Department of the Interior.</p> <p>5 A. If you're going to ask me questions</p> <p>6 about specifics in it, then I'd like to read it.</p> <p>7 Q. I'm suggesting that you do it. I'm</p> <p>8 just asking.</p> <p>9 A. Okay. Great.</p> <p>10 Q. I'm introducing what it is we're</p> <p>11 talking about.</p> <p>12 A. Perfect, okay. Can you scroll up a</p> <p>13 little bit. Okay. Can you scroll up a little</p> <p>14 bit more, please. Just scroll up a little bit</p> <p>15 more. The way our screen is set up it's</p> <p>16 blocking. Thanks. Okay.</p> <p>17 Q. Okay.</p> <p>18 Does this look like the official one</p> <p>19 to you?</p> <p>20 A. It does look like the announcement</p> <p>21 that I recall.</p> <p>22 Q. Okay.</p> <p>23 And so you're forwarding it on after</p> <p>24 it's been sent to Senator Heitkamp from North</p> <p>25</p>	<p style="text-align: right;">Page 177</p> <p style="text-align: center;">Crook</p> <p>1 Tedeschi is sending up to madam secretary and</p> <p>2 chief.</p> <p>3 Actually, Tedeschi sends it to a</p> <p>4 number of people in the Corps, including those</p> <p>5 who authored it, Colonel Henderson and</p> <p>6 Mr. Startzell and others, and Ed Jackson forwards</p> <p>7 it up to madam secretary and chief; and that</p> <p>8 email is the one where not only is the assistant</p> <p>9 secretary of the Army for Civil Works,</p> <p>10 Miss Darcy, copied but so is Chief of Engineers</p> <p>11 General Semonite.</p> <p>12 Now and it says, "Latest update,</p> <p>13 have been working across the staff to help define</p> <p>14 the way ahead. Spoke with Brigadier General</p> <p>15 Spellmon and Colonel Henderson regarding the</p> <p>16 special use permit. We will delay final decision</p> <p>17 a few days."</p> <p>18 And then Miss Darcy is the last, if</p> <p>19 you go up to the top of that, do you see where</p> <p>20 she says, she responds to the briefing and says,</p> <p>21 "So has the special use permit been elevated to</p> <p>22 our office?"</p> <p>23 Do you recall that, Mr. Crook,</p> <p>24 you're copied on the, actually, Miss Darcy is</p> <p>25</p>

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<p style="text-align: right;">Page 178</p> <p style="text-align: center;">Crook</p> <p>1 writing back just to you. She's not replying all</p> <p>2 to the group. She's asking you and the lawyer</p> <p>3 Schmauder has the special use permit been</p> <p>4 elevated to our office.</p> <p>5 A. Yes, it appears she's just emailing</p> <p>6 me and counsel.</p> <p>7 Q. Either you didn't respond at all by</p> <p>8 email or your counsel didn't provide it to us. I</p> <p>9 don't know.</p> <p>10 But do you recall what you said to</p> <p>11 Miss Darcy in any fashion in response to her</p> <p>12 question to you?</p> <p>13 A. I don't recall this specific email</p> <p>14 or this specific question. I just generally</p> <p>15 recall that there was discussions about the</p> <p>16 special use permit during this time period.</p> <p>17 Q. You don't -- do you recall not</p> <p>18 responding or responding some other way?</p> <p>19 A. I recall.</p> <p>20 Q. I have to assume --</p> <p>21 A. I recall there was some verbal</p> <p>22 discussion around this time period, so, but I</p> <p>23 don't recall specifically whether or how I</p> <p>24 responded by email.</p> <p>25</p>	<p style="text-align: right;">Page 180</p> <p style="text-align: center;">Crook</p> <p>1 to you, right, Monday, September 12, 2016, 5:28</p> <p>2 p.m. Hold that thought. We're going to go to an</p> <p>3 exhibit, which is 416.</p> <p>4 So if you would, please, read the</p> <p>5 entirety of this email, not the attachments.</p> <p>6 The attachments say pleading. It</p> <p>7 happens to be the emergency motion for in</p> <p>8 junction pending appeal, filed by the Standing</p> <p>9 Rock Sioux Tribe among others, challenging the</p> <p>10 Corps of Engineers.</p> <p>11 We're not going to talk about that,</p> <p>12 so don't feel like you need to read that</p> <p>13 document. It's immaterial to the questions I</p> <p>14 want to ask you.</p> <p>15 A. Okay.</p> <p>16 Q. So if you would read the body of the</p> <p>17 email, which is a forwarded message to you,</p> <p>18 pardon me. You received this message, which was</p> <p>19 September 13, 2016, from Sam Hirsch and the</p> <p>20 environment natural resource division of the</p> <p>21 Justice Department, and it's sent to a number of</p> <p>22 people, and including your counsel today, Miss</p> <p>23 Zilloli and yourself are among the parties copied</p> <p>24 here.</p> <p>25</p>
<p style="text-align: right;">Page 179</p> <p style="text-align: center;">Crook</p> <p>1 I more recall verbal discussions of</p> <p>2 these issues then other than the reports you're</p> <p>3 showing me a lot of emails back and forth.</p> <p>4 Q. I'm just showing you your own email,</p> <p>5 Mr. Crook.</p> <p>6 A. Yes, I'm just saying I don't</p> <p>7 specifically recall this email or whether I</p> <p>8 responded.</p> <p>9 Q. Were you in the habit of not</p> <p>10 responding to your boss when she asked a specific</p> <p>11 question?</p> <p>12 A. No, but sometimes I would respond in</p> <p>13 person rather than by email.</p> <p>14 Q. Okay.</p> <p>15 Do you recall what you responded to</p> <p>16 her, your boss, in person on this request, which</p> <p>17 seems to be a big deal. I'm just wondering</p> <p>18 whether your answer, your testimony is what?</p> <p>19 A. My testimony is that I recall</p> <p>20 generally discussing this issue, but I don't</p> <p>21 recall my specific response to this specific</p> <p>22 question.</p> <p>23 Q. Could we go to, and let's just</p> <p>24 remember what date Miss Darcy posed this question</p> <p>25</p>	<p style="text-align: right;">Page 181</p> <p style="text-align: center;">Crook</p> <p>1 If you look two-thirds of the way</p> <p>2 down this lengthy distribution list and the to</p> <p>3 line you're noted.</p> <p>4 And then we know you got it because</p> <p>5 you forwarded it on to Ed Jackson, and the</p> <p>6 attachment references the Standing Rock Sioux</p> <p>7 Tribe motion for an injunction pending appeal,</p> <p>8 but the email from Mr. Hirsch to you and a large</p> <p>9 number of others, includes an interesting -- it's</p> <p>10 an update from Mr. Hirsch to this group, a few</p> <p>11 updates.</p> <p>12 The first one is about the filing by</p> <p>13 the tribe in the federal court in Washington,</p> <p>14 D.C., and then it says finally here's an exchange</p> <p>15 from yesterday's White House press briefing.</p> <p>16 Would you take a moment and review</p> <p>17 that. I know you've seen this before, just to</p> <p>18 refresh yourself.</p> <p>19 A. Okay. Okay. Can you scroll down.</p> <p>20 Okay.</p> <p>21 Q. What is this an exchange from the</p> <p>22 press briefing? Is this -- do you know an</p> <p>23 individual named Mr. Earnest?</p> <p>24 A. That's referring to Josh Earnest,</p> <p>25</p>

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182:3,  
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1 Crook

2 who was the press secretary for the White House

3 at the time.

4 Q. So this would have been an in-person

5 briefing conducted in the White House press room?

6 A. It appears to me to be a transcript

7 of a regular White House press briefing.

8 Q. It would have occurred in the White

9 House press briefing room; is that fair?

10 A. Yes.

11 Q. So Mr. --

12 A. As the agent really did.

13 Q. Okay.

14 Mr. Earnest, the White House press

15 secretary, is being asked questions I presume

16 from reporters in the press briefing room; is

17 that fair for the context?

18 A. That's what it appears to me to be,

19 yes.

20 Q. And this email is dated

21 September 13, 2016.

22 The question that comes from a

23 reporter in the room, it's only identified by a

24 Q, "Let me ask you, Mr. Earnest, about the

25 pipeline project. I think it surprised some

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2 people that the administration would weigh in

3 after a judicial review had taken place and this

4 is a pause from what I understand.

5 "Can you explain why the President

6 and through the other agencies decided that this

7 was the right decision," and I -- you tell me but

8 it seems as though the question is based upon the

9 September 9th joint statement by what you just

10 testified is the administration's position.

11 Do you agree with me on that, sir?

12 A. I agree that I referred to it as the

13 administration's statement because it was coming

14 from multiple agencies, and, I'm sorry. What was

15 the second part or the other part of your

16 question?

17 Q. The question was the reporter is

18 asking the White House press secretary why the

19 President and through the other agencies decided

20 that this was the right decision.

21 It seems to me that the reporter is

22 understanding that the September 9 joint release

23 is exactly how you characterized it, the

24 administration's position.

25 The administration being that

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2 belonging to the President of the United States

3 at the time Mr. Obama.

4 MS. ZILLOLI: Objection,

5 speculation. Is there a question in it.

6 Q. Do you disagree with anything I

7 said, Mr. Crook?

8 A. Yes.

9 Q. You do disagree?

10 A. Yes. I don't -- the basis of the

11 reporter's assumption that the President decided.

12 I don't know what was shared and not shared with

13 the President, and I believe Mr. Earnest's

14 response is more consistent with my recollection

15 of events than the reporter's assumption, the

16 assumption in the reporter's question.

17 Q. Okay.

18 And Mr. Earnest goes on to say,

19 "Well, this was a decision that was made by the

20 Army corps of engineers and the department of it

21 interior," right?

22 A. Yes.

23 Q. And then he goes on to say at the

24 end of that response, "So it really was based on

25 their judgment at the Department of the Interior

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1 Crook

2 and the Army Corps of Engineers."

3 Mr. Earnest left off the Department

4 of Justice, which is, obviously, on the joint

5 statement but -- so the decision made by the Army

6 Corps of engineers, who in the Army Corps of

7 Engineers made the decision to join that

8 statement?

9 A. So I would -- I would say that

10 people often confuse the Army Corps of Engineers

11 and the Department of the Army at large; and so

12 if I was making that statement, I would refer to

13 the Department of the Interior, the Department of

14 the Army and the Department of Justice.

15 Q. Yes, but that's not what the White

16 House press secretary said, is it?

17 A. No.

18 Q. Okay.

19 So who made the decision in the

20 Department of the Army/Corps of Engineers to join

21 this because the White House secretary is either

22 wrong or correct that someone in the Department

23 of the Army, at what level I don't know, and I'm

24 asking you, who made the decision?

25 A. The decision was Assistant Secretary

ND OBJ.:  
Relevance

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<p style="text-align: right;">Page 186</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 Darcy's.</p> <p>3 Q. Thank you.</p> <p>4 And then with respect to the</p> <p>5 decision that was made by the Department of the</p> <p>6 Interior, who made the Department of Interior</p> <p>7 decision to join the September 9th statement?</p> <p>8 MS. ZILLOLI: Objection,</p> <p>9 speculation, foundation.</p> <p>10 A. I don't know who made the decision.</p> <p>11 I just know who I recall who communicated it to</p> <p>12 me.</p> <p>13 Q. And who was that?</p> <p>14 A. Tommy Boudreau, the chief of staff.</p> <p>15 Q. Tommy Boudreau the chief of staff of</p> <p>16 the secretary of the interior, Miss Sally Jewell?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. All right.</p> <p>19 If we could go, please, to Exhibit</p> <p>20 417.</p> <p>21 A. I'm going to need to take a break</p> <p>22 soon. It doesn't have to be after this but just.</p> <p>23 Q. I'm sorry.</p> <p>24 Who's speaking?</p> <p>25 A. I'm sorry. That's me. I said I</p>	<p style="text-align: right;">Page 188</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 A. Yes.</p> <p>3 Q. And it says, "In answer to the</p> <p>4 questions you had last night, i.e, has the tribe</p> <p>5 been consulted on the new plan and how might the</p> <p>6 move from one site to the other be managed?"</p> <p>7 Redacted, again, you're a lawyer but you're not</p> <p>8 here in the capacity as providing legal advice,</p> <p>9 so I continue to be puzzled by this extensive</p> <p>10 redaction but oh, well.</p> <p>11 My question is about what little we</p> <p>12 have been allowed to see, and that is, you asked</p> <p>13 the question.</p> <p>14 Jackson is recounting it to you and</p> <p>15 says, "What this email chain belows says it</p> <p>16 answers your question," which was, "Has the tribe</p> <p>17 consultant been consulted on the new plan?"</p> <p>18 What is the new plan?</p> <p>19 A. Can I see Colonel Henderson's email</p> <p>20 that was supposedly answering my question?</p> <p>21 Q. Yeah, you bet; you bet. What little</p> <p>22 there is to read because it's been chopped, too.</p> <p>23 A. Can you scroll up a little bit. The</p> <p>24 way our screen is set up it is cutting off part</p> <p>25 of it. Okay. Thanks.</p>
<p style="text-align: right;">Page 187</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 need to take a break relatively soon.</p> <p>3 Q. Can we get through this exhibit and</p> <p>4 then take a break?</p> <p>5 A. Yes.</p> <p>6 MR. SEBY: Miss Zilloli?</p> <p>7 MS. ZILLOLI: That's fine with me.</p> <p>8 MR. SEBY: Okay. Thank you both.</p> <p>9 Q. If we could turn to 417 and go right</p> <p>10 to the body of the document, there is three</p> <p>11 emails here. Easy to get through them though</p> <p>12 because your counsel has redacted them, and I</p> <p>13 don't see any lawyers on here either but that's a</p> <p>14 different issue for another time that we have</p> <p>15 content of federal emails with no attorneys</p> <p>16 present that's been chopped off from the state's</p> <p>17 view.</p> <p>18 So we'll take that up with court,</p> <p>19 but let's go right to the top of the last email</p> <p>20 in this chain; and, Mr. Crook, the last email in</p> <p>21 this chain is from Major General Jackson to you.</p> <p>22 Nobody else on the email and it says to you from</p> <p>23 Ed Jackson, I'm going to tell you I've learned</p> <p>24 that FYSA means for your situational awareness;</p> <p>25 is that right?</p>	<p style="text-align: right;">Page 189</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 Q. Okay.</p> <p>3 A. I'm sorry. Can I see General</p> <p>4 Jackson's whatever there was of his question to</p> <p>5 Colonel Henderson, if you scroll down. Oh, okay.</p> <p>6 Thank you.</p> <p>7 Q. Do you see my point, Mr. Crook, not</p> <p>8 much to read because it's been chopped. All</p> <p>9 right.</p> <p>10 So have you read the entirety of</p> <p>11 what we can read out of this email stream?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall it before it was</p> <p>14 redacted by your counsel?</p> <p>15 MS. ZILLOLI: Objection to the</p> <p>16 extent you're asking for the content of something</p> <p>17 that we have redacted. He's not authorized to</p> <p>18 provide that.</p> <p>19 Q. That wasn't my question. So let's</p> <p>20 keep moving on, please.</p> <p>21 Do you recall receiving this email?</p> <p>22 A. This refreshes my recollection. I</p> <p>23 didn't recall it before.</p> <p>24 Q. Okay, good.</p> <p>25 So you didn't get Colonel</p>



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<p style="text-align: right;">Page 190</p> <p>1 Crook</p> <p>2 Henderson's email. You weren't in the</p> <p>3 distribution. Jackson was and so is Scott</p> <p>4 Spellmon, General Spellmon, and Miss Auguliera.</p> <p>5 So ever since talking about a</p> <p>6 conversation he had with Chairman Archambault,</p> <p>7 and he said "Explained our limitation for</p> <p>8 providing a permit in the area north of</p> <p>9 Cannonball."</p> <p>10 Do you recall what that limitation</p> <p>11 was?</p> <p>12 A. Not specifically no. I just recall</p> <p>13 that Colonel Henderson was working to try to get</p> <p>14 the protest moved south.</p> <p>15 Q. The whole thing?</p> <p>16 A. Yes, I mean, that was -- his</p> <p>17 intention was to try to do that.</p> <p>18 Q. But he's telling the chairman who</p> <p>19 applied for a permit including areas on the north</p> <p>20 side of the Cannonball River because, Mr. Crook,</p> <p>21 the Oceti Sakowin Camp otherwise referred to as</p> <p>22 the main camp was located there.</p> <p>23 So what's the limitation for</p> <p>24 providing a permit, at least in your colleagues</p> <p>25 at the chorus bind, what was the issue there?</p>	<p style="text-align: right;">Page 192</p> <p>1 Crook</p> <p>2 saying to you, just you, "This answers your</p> <p>3 questions you had last night. Has the Prime been</p> <p>4 consulted on the new plan?"</p> <p>5 So why did you ask that question,</p> <p>6 Mr. Crook, on September 14, 2016?</p> <p>7 Remember that date because we will</p> <p>8 talk about why I want to ask you about it</p> <p>9 further. Just remember September 14.</p> <p>10 A. Okay.</p> <p>11 Q. So let's carry on here. I don't</p> <p>12 want to keep stumbling.</p> <p>13 So then on -- 419, please, which, if</p> <p>14 you look at the cover email, it's a call with</p> <p>15 Standing Sioux Tribe general counsel, and this is</p> <p>16 on the calendar of Miss Jo-Ellen Darcy, assistant</p> <p>17 secretary to the Army, and you were an invitee to</p> <p>18 participate in this call along with other</p> <p>19 individuals from the Corps; and the subject of</p> <p>20 the call that you're noted as a required attendee</p> <p>21 is call with Standing Rock's Sioux Tribe's</p> <p>22 general counsel.</p> <p>23 And the calendar invite says down</p> <p>24 below, and, yes, it has been redacted and I</p> <p>25 understand that because Mr. Schmauder's on here,</p>
<p style="text-align: right;">Page 191</p> <p>1 Crook</p> <p>2 MS. ZILLOLI: Objection.</p> <p>3 Speculation.</p> <p>4 A. I don't recall or I don't know what</p> <p>5 was in Colonel Henderson's mind, and I don't</p> <p>6 recall what he's referring to when he uses the</p> <p>7 word "limitation."</p> <p>8 Q. Okay.</p> <p>9 And then Henderson goes on to say,</p> <p>10 "We told him about that and we talked about the</p> <p>11 issues to discuss the issue in the south with</p> <p>12 caveats, which lead us to discussing a number of</p> <p>13 concerns with activities that we are now seeing</p> <p>14 on site."</p> <p>15 What does that mean to you, sir?</p> <p>16 A. I guess it means what it says.</p> <p>17 Q. Okay.</p> <p>18 A. Is there a piece of it that you are</p> <p>19 specifically asking about?</p> <p>20 Q. No, if it means what you said, you</p> <p>21 don't disagree with it I guess is what you're</p> <p>22 saying. I'm just trying to understand what your</p> <p>23 thought is on this. Let's move on.</p> <p>24 A. Okay.</p> <p>25 Q. So Major Jackson, General Jackson is</p>	<p style="text-align: right;">Page 193</p> <p>1 Crook</p> <p>2 but we can see "I just spoke with Bill Perry's,</p> <p>3 the tribe's general counsel here in D.C. He said</p> <p>4 that the Standing Rock Sioux tribe will be in</p> <p>5 town next Thursday and Friday, September 22 and</p> <p>6 23, and would like to meet then with the three</p> <p>7 agencies in person. Perry would join him and the</p> <p>8 chairman wants a conference call this week."</p> <p>9 That's Miss Darcy speaking, isn't</p> <p>10 it?</p> <p>11 A. Actually, I don't know that.</p> <p>12 Q. She's identified as the organizer.</p> <p>13 A. Yes, yes, but that could have been</p> <p>14 cut and pasted from the Department of Justice or</p> <p>15 someone else. I don't know if that's her.</p> <p>16 Q. I see.</p> <p>17 In fact, it says thanks, Sam.</p> <p>18 Who's that?</p> <p>19 A. I believe that's Sam Hirsch.</p> <p>20 Q. So Miss Darcy is -- got it; got it.</p> <p>21 So the DOJ lawyer got a call from</p> <p>22 the tribe's general counsel and --</p> <p>23 A. I don't know that. I'm just saying</p> <p>24 that I don't know also that that text was written</p> <p>25 by Assistant Secretary Darcy or him.</p>

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<p style="text-align: right;">Page 194</p> <p style="text-align: center;">Crook</p> <p>1 Q. Okay.</p> <p>2 Did you go to this meeting? I'm</p> <p>3 sorry. It's a call.</p> <p>4 Did you participate in this call?</p> <p>5 A. I don't specifically today remember</p> <p>6 a call. I do remember an in-person meeting that</p> <p>7 happened.</p> <p>8 Q. When?</p> <p>9 A. I believe it was during this time</p> <p>10 period. It may be one of the days that was</p> <p>11 provided there.</p> <p>12 Q. What did you talk about?</p> <p>13 A. This was a meeting at the justice</p> <p>14 department, and the chairman, I think, shared his</p> <p>15 view of the protests and what was happening</p> <p>16 there, the status of any discussions or lack of</p> <p>17 discussions between the tribe and Energy Transfer</p> <p>18 Partners; and I believe we asked some questions</p> <p>19 about exploring whether there was some sort of</p> <p>20 compromise with Energy Transfer Partners that</p> <p>21 could help resolve the situation.</p> <p>22 Q. Did you have any manner of</p> <p>23 discussion regarding the special use permit?</p> <p>24 A. I don't recall whether it was</p> <p>25</p>	<p style="text-align: right;">Page 196</p> <p style="text-align: center;">Crook</p> <p>1 I think Mr. Crook asked for a break.</p> <p>2 MR. SEBY: Sure did. My apologies.</p> <p>3 Let's take a break now.</p> <p>4 MS. ZILLOLI: Thanks.</p> <p>5 MR. SEBY: Mr. Crook, how much time</p> <p>6 would you like?</p> <p>7 THE WITNESS: A few minutes.</p> <p>8 MR. SEBY: Let's take 10.</p> <p>9 THE VIDEOGRAPHER: We're off the</p> <p>10 record 7:39 p.m. UTC. 3:39 Eastern.</p> <p>11 (A break from the record was taken.)</p> <p>12 THE VIDEOGRAPHER: Back on the</p> <p>13 record 7:51 p.m. UTC., 3:51 Eastern.</p> <p>14 Q. Mr. Crook, if we could refer,</p> <p>15 please, to Exhibit 420. Just by way of</p> <p>16 introduction, this is another one of those</p> <p>17 covers. Well, here's the email transmittal.</p> <p>18 It's from Miss Jennifer Greer to</p> <p>19 General Jackson and you and Ms. Darcy, copy to</p> <p>20 others and the email simply</p> <p>21 reads, "Gentleman/Ma'am, please see the attached,"</p> <p>22 and the attached is a referenced North Dakota</p> <p>23 delegation letter to DOG, DOI, Army Corps, re:</p> <p>24 Dakota Access Pipeline line, and there is the</p> <p>25</p>
<p style="text-align: right;">Page 195</p> <p style="text-align: center;">Crook</p> <p>1 discussed or not.</p> <p>2 Q. Really.</p> <p>3 At all?</p> <p>4 A. No, I don't.</p> <p>5 Q. I asked, Mr. Crook, because it was</p> <p>6 precisely in this week of September 2016 that the</p> <p>7 Corps issued a press release announcing the Corps</p> <p>8 had issued a special use permit and granted a</p> <p>9 special use permit.</p> <p>10 I know you're aware of that, aren't</p> <p>11 you?</p> <p>12 A. Like I said, I don't remember the</p> <p>13 specific status of the special use permit. Just</p> <p>14 that it was, you know, an issue that we were</p> <p>15 discussing, but I don't remember the specifically</p> <p>16 timing or status of the permit.</p> <p>17 Q. Or discussing it at this meeting, at</p> <p>18 the Department of Justice is what I understood</p> <p>19 you to have said?</p> <p>20 A. Right. I don't recall whether it</p> <p>21 was discussed or not at this meeting.</p> <p>22 Q. Okay.</p> <p>23 If we could keep moving along to --</p> <p>24 MS. ZILLOLI: I'm sorry. Mr. Seby,</p> <p>25</p>	<p style="text-align: right;">Page 197</p> <p style="text-align: center;">Crook</p> <p>1 letter.</p> <p>2 Do you recall this letter, Mr. Crook</p> <p>3 or would you like to read it?</p> <p>4 A. Give me a chance to read it, please.</p> <p>5 Q. You bet. That's what I'm</p> <p>6 suggesting, if you have not.</p> <p>7 The letter is addressed from United</p> <p>8 States Senator John Hoeven, United States Senator</p> <p>9 Heidi Heitkamp, United States Congressman Kevin</p> <p>10 Cramer and the Governor of the State of North</p> <p>11 Dakota, Jack Dalrymple, all on the letterhead of</p> <p>12 this letter dated September 14, 2016 to Loretta</p> <p>13 Lynch, the Attorney General of the United States;</p> <p>14 Sally Jewell, the Secretary of the Department of</p> <p>15 the Interior and Jo-Ellen Darcy, the Assistant</p> <p>16 Secretary for the Army of Civil Works.</p> <p>17 A. Okay. Can you scroll down, please.</p> <p>18 Can you scroll down a little bit more, please.</p> <p>19 Okay. A little bit more, please. Okay. And a</p> <p>20 little bit more, please. Okay.</p> <p>21 Q. Mr. Crook, do you remember this</p> <p>22 letter?</p> <p>23 A. I do now.</p> <p>24 Q. Okay.</p> <p>25</p>

197:8-17,  
197:22-198:8,  
200:3-17,  
201:15-21,  
203:4-9,  
204:2-12  
  
401-402,  
802

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2 Do you recall the entire

3 congressional delegation and the Governor of

4 North Dakota expressing strong concern about the

5 September 9th joint statement that we've been

6 talking about?

7 A. I recall that this letter was sent

8 and it does use the word "strong concerns."

9 Q. And it goes on to say, and, in fact,

10 in bold in their letter to Miss Darcy is a

11 statement that says, "As a result of your delay,

12 North Dakota is experiencing a strain on its law

13 enforcement resources.

14 "The governor and tribal leaders

15 have requested assistance to help North Dakota

16 with its law enforcement efforts and to help with

17 public safety. We urge you to follow through on

18 your joint release and begin immediately for cost

19 share reimbursement and manpower that will be

20 needed to support state and local law enforcement

21 as they continue to provide public safety."

22 Do you recall discussing this with

23 Miss Darcy?

24 A. I recall discussing with her the

25 plans to set up a meeting, a briefing in response

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2 to the letter.

3 Q. And what was that discussion?

4 A. I believe we ended up deciding to do

5 a call with the delegation and I believe for

6 scheduling reasons I was on the call and

7 Miss Darcy was not.

8 Q. How did that go over?

9 A. The call?

10 Q. That fact that you were on the call.

11 I'm not suggesting you're not important, but this

12 letter was sent to Miss Darcy and she wasn't on

13 the call?

14 A. Yes, I believe the call was me, Rita

15 Augular from DOJ, and I don't remember from the

16 interior department but --

17 Q. Someone?

18 A. I, frankly, don't recall anybody

19 complaining about who was on the call. They were

20 more focused on the substance of their questions.

21 Q. So what did you do to answer or

22 allay their concerns, if anything?

23 A. I provided what information I could

24 or knew at the time in response to their

25 questions, and I also followed-up and shared

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2 their request for additional federal resources.

3 Q. Well, the September 9th joint

4 statement said, "DOJ and DOI will deploy

5 resources to North Dakota to help maintain public

6 safety."

7 What resources to maintain public

8 safety in North Dakota did the Department of

9 Justice provide?

10 A. In addition to the U.S. attorney for

11 North Dakota who was there and whoever was on his

12 staff or team, I believe they sent a coordinator

13 from there. I forget the name of the office, but

14 it's like, it's like a community response office,

15 or something like that, and I'm not aware of

16 other resources they may have or may not have

17 non-publicly provided, such as the FBI or others.

18 Q. Did they?

19 A. Did they what?

20 Q. Did the FBI provide any resources?

21 MS. ZILLOLI: Objection,

22 speculation, foundation.

23 Q. I'm not asking him to speculate.

24 A. I recall vaguely that there was some

25 involvement of FBI in some piece of this, but I

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2 just don't recall specifically what or how much

3 or I don't think I ever knew any details of it.

4 Q. I think you mentioned Miss Augular

5 was on the call you arranged with the delegation

6 and the governor.

7 What did Miss Augular say in

8 response to this letter from the State of North

9 Dakota highest elected officials? Do you recall?

10 A. I think she took the questions on

11 law enforcement support, and I believe she said

12 she would share those requests with the

13 Department of Justice, but I don't think she

14 responded substantively to the request or.

15 Q. So you had a call to respond to a

16 letter that was very detailed, and you're telling

17 me that the DOJ got on the call with you and said

18 I'll listen to your questions and I'll get back

19 to you?

20 A. Yes. They didn't have an

21 announcement ready to make on that call.

22 Q. When did you have the call?

23 A. I don't know the specific date. It

24 was at some point after this letter.

25 Q. Obviously.

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<p style="text-align: right;">Page 202</p> <p>Crook</p> <p>When?</p> <p>A. I don't recall.</p> <p>Q. Next day?</p> <p>A. I don't recall how much time passed between receiving this letter and the call. It was probably more than a day, but I really don't recall, you know, how much more it was.</p> <p>Q. Well, what did you say? Did you give the same I'll get back to you kind of response? Did you have anything material to say?</p> <p>MS. ZILLOLI: Objection. Compound.</p> <p>A. If I recall the questions to me were about our review process and, also, about the broader tribal consultation and whether they were related, and I provided what information I could on where we were in the review process and, also, answered questions clarifying that the broader tribal consultation was separate from our process reviewing the permits and DAPL that had been done.</p> <p>Q. And what did the representative from the Department of the Interior have to say?</p> <p>A. I don't recall who from Department of the Interior was on the call or what they</p>	<p style="text-align: right;">Page 204</p> <p>Crook</p> <p>And so in response to that letter to those gentlemen and not a one of the addressees could be bothered to be on the call to discuss it; is that accurate?</p> <p>MS. ZILLOLI: Objection.</p> <p>Argumentative.</p> <p>Q. What's the answer, Mr. Crook?</p> <p>A. On the call immediately after or after this letter, Assistant Secretary Darcy was not on it. The attorney general as not on it, and the secretary of interior was not on it.</p> <p>Q. I think we know that. You've already said that. So let's move on to Exhibit 421.</p> <p>Mr. Crook, if you'd please look at the email chain that's here. It's two emails and there is an attachment we will get to. It's a September 14 storyboard and are update from the Corps with regard to the DAPL situation.</p> <p>The email is dated September 14, 2016.</p> <p>Remember when I spoke a moment ago with you about remembering this week in September when you said --</p>	<p>204:2-12 611</p> <p><b>ND OBJ.:</b> As to 204:6-7, Relevance</p>
<p style="text-align: right;">Page 203</p> <p>Crook</p> <p>said.</p> <p>Q. Okay.</p> <p>Why didn't Miss Darcy make a point to be on a call with two United States senators, a United States congressman and a governor of the State of the United States.</p> <p>Why couldn't she be on the call?</p> <p>A. I don't remember what the issue was.</p> <p>Q. Did she choose not to be on the call?</p> <p>A. I don't know what -- a, I don't know why she wasn't on the call, so I don't know. I don't recall what her thinking would have been.</p> <p>I communicated directly with the delegation numerous times and met with them in person numerous times about these issues.</p> <p>So it was not surprising to me that I would be the one talking to them.</p> <p>Q. Well, the last sentence of the letter from the two United States senators, United States congressman and the governor of the state of the United States, in the United States, says, "Thank you for your attention to this matter and we look forward to hearing from you."</p>	<p style="text-align: right;">Page 205</p> <p>Crook</p> <p>A. Yes.</p> <p>Q. -- you were talking with the chairman of the Standing Rock Sioux tribe. In fact, you met with him.</p> <p>Here in the email, the first email, again, this looks like Colonel Tedeschi is tasked with sending up these daily reports. He sends it to major General Jackson and Miss KDA. This time he doesn't include the Assistant Secretary Darcy on it and doesn't include you, but it's forwarded on from Jackson to Miss Darcy and Chief Semonite and copied to you, and if you take a look at Tedeschi's email, there's an attachment that I would like to go to, which is the Corps storyboard.</p> <p>A. Could I read his email first?</p> <p>Q. Yeah, sure, of course.</p> <p>A. Thank you. Can you scroll up a little bit. Not quite that far. Thanks. Okay.</p> <p>Q. Are you done with the email?</p> <p>A. Yes. Thank you.</p> <p>Q. Okay. Now we'll go to the attachment.</p> <p>So in this site, siterep, DAPL</p>	

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1 Crook

2 siterep dated September 14, 2016, in the

3 Northwest commander's assessment, this is --

4 that's Omaha, Omaha District commander's

5 assessment says, second sentence, "We will

6 continue to dialogue regarding the specialty use

7 permit to provide a unified response to the

8 SRST's request. The special use permit and a

9 draft press release will be available for

10 vertical review on Thursday, 15 September before

11 publishing it on Friday, 16 September."

12 Do you see that?

13 A. Yes, I do.

14 Q. Okay.

15 And then in the section, sections of

16 the headings on the right side it says next 72

17 hours. First bullet is draft special use permit

18 for DA, DOJ, BAI/DOI, U.S. Attorney office and

19 FBI review.

20 Who is DA?

21 A. Department of the Army.

22 Q. Okay.

23 And you see all the other agencies.

24 So you -- whose idea was it to get

25 the DOJ to look at a draft Corps special use

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1 Crook

2 Corps to the Department of Justice, the

3 Department of Interior, the U.S. Attorney's

4 Office and the FBI? How many?

5 A. I don't think I looked at another

6 special use permit when I was in the Army.

7 Q. Ever?

8 A. Not that I recall.

9 Q. Why was that?

10 A. Because generally a special use

11 permit is issued at the district level.

12 Q. So this was not an ordinary special

13 use permit, was it?

14 A. No.

15 Q. By this time, Mr. Crook, had you

16 become, had you made the effort to become

17 personally aware of the content of the Corps of

18 Engineers land use regulations?

19 A. As I said before, it was only part

20 of discussions where that would have been

21 discussed and I may have seen reports that, you

22 know, reference them if they were relevant to

23 what was being reported.

24 Q. So as of this date, Mr. Crook,

25 September 14, 2016, how long had you been in your

206:24-207:12  
602

ND OBJ.:  
Relevance

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2 permit and have the Department of the Interior

3 look at it and a U.S. Attorney's office and the

4 Federal Bureau of Investigation? Whose idea was

5 that to have a Corps special use permit reviewed?

6 MS. ZILLOLI: Objection,

7 speculation, foundation.

8 Q. Do you know, Mr. Crook?

9 A. No. I just know that Colonel

10 Henderson was coordinating at the local level

11 with agency counterparts but I don't know the

12 specifics of it.

13 Q. He mentioned in the email many just

14 read and asked to read, which I'm glad you did,

15 you saw Colonel Henderson's statement was a

16 vertical review.

17 Isn't that within the Corps itself?

18 A. It can include also the Department

19 of the Army, just depending on what they're

20 referring to or it can just be the Corps going up

21 to headquarters.

22 Q. So, in your experience, Mr. Crook,

23 being a principal deputy assistant secretary of

24 the Army for Civil Works, how many special use

25 permits did you see get referred outside of the

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1 Crook

2 position with the Department of Army?

3 A. A little over a year. 13 months.

4 Q. And when this period was occurring,

5 had you been provided with opinions written or

6 verbal with respect to the requirements or

7 processes governing the Corps management of its

8 lands?

9 A. Those were probably part of

10 discussions generally on the special use permit

11 and the protests.

12 Q. Is that a yes or a no to my

13 question?

14 A. That's a -- I believe there were

15 references to the governing regulations but I

16 don't remember specifically what was discussed.

17 Q. I'm going to ask my question one

18 more time and I hope maybe this helps you answer

19 it.

20 Had you been provided with opinions

21 or positions with respect to the application of

22 the Corps special use regulations with respect to

23 this application by the Standing Rock Sioux

24 Tribe?

25 A. I was part of meetings where the

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<p style="text-align: right;">Page 210</p> <p style="text-align: center;">Crook</p> <p>1 lawyers expressed opinions on the legal governing</p> <p>2 regulations.</p> <p>3 Q. And so I'm not asking you about what</p> <p>4 those expressions of legal positions were from</p> <p>5 your counsel.</p> <p>6 But did you rely upon that in making</p> <p>7 your decision whether to support or oppose the</p> <p>8 issuance of a proposed special use permit?</p> <p>9 MS. ZILLOLI: Objection as to facts</p> <p>10 or misstates testimony.</p> <p>11 A. I don't recall supporting or</p> <p>12 opposing a special use permit.</p> <p>13 Q. So what were you doing, just</p> <p>14 observing the process, principal deputy just</p> <p>15 observing how things were flowing?</p> <p>16 A. I would say that one of my roles is</p> <p>17 to make sure that the proper information is being</p> <p>18 shared. So I wasn't just observing but I wasn't</p> <p>19 the one deciding either.</p> <p>20 Q. Who was the one deciding, Mr. Crook?</p> <p>21 A. Generally, the decision is the</p> <p>22 district commander. Depending on what the</p> <p>23 decision is, it could go up to division or</p> <p>24 headquarters or the assistant secretary.</p> <p>25</p>	<p style="text-align: right;">Page 212</p> <p style="text-align: center;">Crook</p> <p>1 people trying to understand what the decision was</p> <p>2 going to be, what potential ramifications were,</p> <p>3 what the response on the ground would be. I</p> <p>4 think people were just wanting to understand how</p> <p>5 they were thinking about the potential</p> <p>6 consequences of any move in this area.</p> <p>7 Q. What does that mean?</p> <p>8 I'm not sure I even understand what</p> <p>9 you said.</p> <p>10 A. I think there were discussions about</p> <p>11 the decisions on the special use permit and its</p> <p>12 potential consequences.</p> <p>13 Q. How did those relate to a decision</p> <p>14 unless you're telling me that nobody else</p> <p>15 participated in the decision and it was</p> <p>16 exclusively made by Colonel Henderson,</p> <p>17 notwithstanding all of the Corps storyboards we</p> <p>18 just read that talk about it being above his</p> <p>19 position?</p> <p>20 MS. ZILLOLI: Objection. Misstates</p> <p>21 evidence.</p> <p>22 A. I think that there was a desire by a</p> <p>23 lot of levels and agencies to be informed and be</p> <p>24 consulted, but we also tried to preserve the</p> <p>25</p>
<p style="text-align: right;">Page 211</p> <p style="text-align: center;">Crook</p> <p>1 Q. Who made the decision with respect</p> <p>2 to this particular request for a special use</p> <p>3 permit?</p> <p>4 A. I believe that Colonel Henderson was</p> <p>5 making the decision but was keeping his vertical</p> <p>6 chain through the Corps and assistant secretary</p> <p>7 and fellow agencies informed of what the decision</p> <p>8 is.</p> <p>9 Q. Why did you have to have an unusual</p> <p>10 process when your answer is, despite that usual</p> <p>11 process, Henderson made the decision by himself;</p> <p>12 is that really what you're saying?</p> <p>13 A. I would say that Henderson made the</p> <p>14 decision after consultation from the group that I</p> <p>15 just described.</p> <p>16 Q. And what was the nature of that</p> <p>17 consultation, a direction to Colonel Henderson to</p> <p>18 take a specific action or thanks for telling us,</p> <p>19 good luck. Let us know what you decide?</p> <p>20 MS. ZILLOLI: Objection to the</p> <p>21 extent it asks for speculation.</p> <p>22 A. I don't think it was either</p> <p>23 direction or him deciding alone.</p> <p>24 I think there was a dialogue with</p> <p>25</p>	<p style="text-align: right;">Page 213</p> <p style="text-align: center;">Crook</p> <p>1 Corps uniform offices decision space and</p> <p>2 authority.</p> <p>3 Q. Okay.</p> <p>4 Earlier there was an exhibit that</p> <p>5 Miss Darcy asked "Has the special use permit been</p> <p>6 elevated to our office," right?</p> <p>7 Do you remember that?</p> <p>8 A. Yes.</p> <p>9 Q. And at the time when we went through</p> <p>10 that, you didn't recall what the answer was or</p> <p>11 you didn't recall how you responded to</p> <p>12 Miss Darcy's question to you.</p> <p>13 Now do you recall?</p> <p>14 A. I recall that -- well, I don't</p> <p>15 recall it being formally elevated to our office.</p> <p>16 Q. Okay.</p> <p>17 Maybe -- do you think Miss Darcy</p> <p>18 will know all these answers to these questions</p> <p>19 that you're not remembering?</p> <p>20 A. Y'all have to ask her.</p> <p>21 Q. Okay.</p> <p>22 We will. We will. We're speaking</p> <p>23 with her next week, so we'll let her know we're</p> <p>24 asking questions because we haven't gotten an</p> <p>25</p>



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1 Crook

2 answer yet, okay.

3 Can we go to Exhibit 123 or 423. So

4 short email here. Next page, please.

5 What this is is Amy Gaskill, who's a

6 chief of public affairs for the Northwest

7 Division of the Corps.

8 She is writing to Moira Kelly in the

9 Corps in your office. Miss Kelly forwards it on

10 to you and says can we talk to you and attached

11 to that short email is a draft press release

12 regarding special use permit.

13 Mr. Crook, do you remember receiving

14 this draft special use permit on September 15th?

15 A. I mean, this refreshes my

16 recollection that I did receive a draft and that

17 I opened it.

18 Q. Okay. Good. I'm glad.

19 So do you want to read this draft

20 press release that was sent to you?

21 A. Please. Can you scroll down,

22 please. Okay.

23 Q. Are you done reading the draft?

24 A. Yes.

25 Q. And at the very bottom of this draft

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1 Crook

2 it says, "The following paragraph will be

3 included in the press distribution but not the

4 press release that is placed on the website," and

5 then it says, "Because the litigation process

6 involving the Army Corps of Engineers is ongoing,

7 we must refer all queries from the media to the

8 Department of Justice."

9 Do you see that?

10 A. Yes.

11 Q. So does that mean this would be a

12 Corps of Engineers press release?

13 A. It appears to me that it was going

14 to be a press release from the Northwest Division

15 of the Army Corps of Engineers.

16 Q. Okay.

17 So, Mr. Crook, on September 15th,

18 was this the first time you had heard of a press

19 release and the idea that the Corps would be

20 developing and issuing one in conjunction with

21 proposing a special use permit to the Standing

22 Sioux Tribe?

23 A. I believe an earlier email you

24 showed me referred to a press release being

25 prepared.

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1 Crook

2 Q. Yes.

3 Did Miss Gaskill cook this draft up

4 on her own or did she have any input in terms of

5 what type of content to develop in a proposed

6 draft that she would then show to you?

7 A. I don't know what she did in

8 drafting this.

9 Q. Okay.

10 You don't know who contributed to

11 the ideas that are set forth in this draft press

12 release or do you?

13 A. I don't other than, I mean, she has

14 quotes from Colonel Henderson, but I don't know

15 if she drafted those or those came from him.

16 Q. Right. Me either.

17 So let's take a look at the

18 language. You're an attorney. Let's take a look

19 at the language that's in this draft press

20 release.

21 How did this language strike you? I

22 know you read it so I don't want to ask you to

23 reread it. So I want you to comment on the

24 phrasing that was used and how you reacted to it.

25 "Special use permit granted to

**ND OBJ.:**  
Introduces  
new material

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2 Standing Rock Sioux Tribe. Today the Army Corps

3 issued a special use permit." Later, third

4 paragraph. "The special use permit allows."

5 Those are words of finality,

6 wouldn't you agree with me?

7 MS. ZILLOLI: Objection. legal

8 conclusion and Mr. Crook has testified that he

9 was not acting in a legal capacity.

10 Q. I'm not asking for his legal

11 capacity then.

12 I'm asking as a person who utilizes

13 the English language on an everyday basis, do

14 those words seem accurate to you or a little

15 ahead of the skis, like too strong, not accurate?

16 A. I actually don't know what was done

17 after this draft, and so whether they were

18 accurately describing this data as a special use

19 permit or what was announced afterwards or not.

20 Q. So at this time do you know whether

21 or not these words are accurate or you didn't

22 even think about it?

23 A. I don't know what I specifically

24 thought when I was reviewing this document at the

25 time.

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<p style="text-align: right;">Page 218</p> <p style="text-align: center;">Crook</p> <p>1 Q. Did you object to the use of these</p> <p>2 words?</p> <p>3</p> <p>4 A. I don't have a recollection of</p> <p>5 having objections to anything in this document.</p> <p>6 Q. Okay.</p> <p>7 So you were okay with that</p> <p>8 terminology then?</p> <p>9 MS. ZILLOLI: Objection. Misstates</p> <p>10 testimony.</p> <p>11 A. I don't know if I edited this</p> <p>12 document or what I did with this document. I</p> <p>13 just don't recall sitting here today.</p> <p>14 Q. Okay.</p> <p>15 And if you edit it to address these</p> <p>16 phrases I talked with you about, one would see</p> <p>17 that in the final version of this document,</p> <p>18 wouldn't they?</p> <p>19 A. If there were edits, one would see</p> <p>20 them if there was a final version that was</p> <p>21 issued.</p> <p>22 Q. Okay.</p> <p>23 A. But, again, I don't know whether I</p> <p>24 edited it or somebody else did or what was done</p> <p>25 with it afterwards.</p>	<p style="text-align: right;">Page 220</p> <p style="text-align: center;">Crook</p> <p>1 what appears to be -- there's no redaction</p> <p>2 notification here.</p> <p>3</p> <p>4 Why don't we have the comments</p> <p>5 below?</p> <p>6 MS. ZILLOLI: Objection.</p> <p>7 Speculation.</p> <p>8 A. I don't know. I'm sorry.</p> <p>9 Q. Okay.</p> <p>10 MR. SEBY: Another issue we'll have</p> <p>11 to be taking up because this is a document that</p> <p>12 was produced by your counsel and looks incomplete</p> <p>13 by the terms of the people communicating the</p> <p>14 emails itself.</p> <p>15 Q. So anyhow, let's continue. Major</p> <p>16 Jackson forwards this on to you. It says "Lowry</p> <p>17 more to follow in an hour. So include a</p> <p>18 potentially amended press release" -- "to include</p> <p>19 a potentially amended press release."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. What do you think that means</p> <p>23 relative to the portion of Henderson's email that</p> <p>24 we can see?</p> <p>25 A. This chain reminds me that there is,</p>
<p style="text-align: right;">Page 219</p> <p style="text-align: center;">Crook</p> <p>1 Q. Okay.</p> <p>2 So you saw this but you don't recall</p> <p>3 what you did in response to receiving this; is</p> <p>4 that what your testimony is?</p> <p>5</p> <p>6 A. Yes.</p> <p>7 Q. So, okay. Got it. Well, okay.</p> <p>8 So let's go to Exhibit 424, which is</p> <p>9 an email which has two parts in it. The first at</p> <p>10 the bottom. I'm sorry. We'll let Miss Hymel</p> <p>11 transition us here. Sorry, Rachel.</p> <p>12 Mr. Crook, if you would read the</p> <p>13 two-part email. It's short.</p> <p>14 A. Okay. Okay.</p> <p>15 Q. And then your email above that</p> <p>16 because --</p> <p>17 A. Okay.</p> <p>18 Q. Mr. Crook, I'm confused by this</p> <p>19 email strain because, if you look at Colonel</p> <p>20 Henderson's email, the first one that is in the</p> <p>21 exhibit, he starts off by saying "Roger on the</p> <p>22 comments below."</p> <p>23 Do you see any comments below?</p> <p>24 A. No.</p> <p>25 Q. Us either, and so we're puzzled by</p>	<p style="text-align: right;">Page 221</p> <p style="text-align: center;">Crook</p> <p>1 that the Corps was talking to the tribe about</p> <p>2 whether Chairman Archambault would sign on to a</p> <p>3 joint press release.</p> <p>4</p> <p>5 Q. Okay. That's good that you're</p> <p>6 refreshed again.</p> <p>7 Can you elaborate now based upon you</p> <p>8 being refreshed about all this stuff.</p> <p>9 MS. ZILLOLI: Objection, vague.</p> <p>10 A. I just recall that there was a</p> <p>11 discussion to see if we would sign on to a joint</p> <p>12 press release.</p> <p>13 Q. And what does signing on mean</p> <p>14 relative to Jackson's comment that more to follow</p> <p>15 in an hour to include a potentially amended press</p> <p>16 release.</p> <p>17 What does that mean relative to your</p> <p>18 understanding now that you're refreshed about all</p> <p>19 of this?</p> <p>20 A. I mean that to mean if Chairman</p> <p>21 Archambault agreed to join the press release that</p> <p>22 they would amend it to add that.</p> <p>23 Q. Who invited him to join the Corps</p> <p>24 press release?</p> <p>25 A. It appears like from the email chain</p>

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<p style="text-align: right;">Page 222</p> <p style="text-align: center;">Crook</p> <p>1 that Colonel Henderson was speaking with him.</p> <p>2 Q. I know.</p> <p>3 But who invited the chairman to</p> <p>4 participate and consider joining a draft press</p> <p>5 release announcing a proposed special use permit?</p> <p>6 MS. ZILLOLI: Objection,</p> <p>7 speculation.</p> <p>8 A. I don't have knowledge of somebody</p> <p>9 besides Colonel Henderson reaching out to him</p> <p>10 about it.</p> <p>11 Q. And you say above, last, your</p> <p>12 response to Ted Jackson is "Many thanks. Look</p> <p>13 forward to hearing his message back."</p> <p>14 What was his message back?</p> <p>15 A. If I recall correctly, I believe</p> <p>16 that Chairman Archambault decided not to join the</p> <p>17 press release.</p> <p>18 Q. Okay.</p> <p>19 He did not?</p> <p>20 A. I recall him having concerns about</p> <p>21 it but I --</p> <p>22 Q. What were those concerns?</p> <p>23 A. I don't know what they were</p> <p>24 specifically.</p> <p>25</p>	<p style="text-align: right;">Page 224</p> <p style="text-align: center;">Crook</p> <p>1 That's good. Okay.</p> <p>2 Q. Did you read it?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Not much to talk about in</p> <p>5 Colonel Tedeschi's email because he just</p> <p>6 basically reiterates what we will talk about in</p> <p>7 the storyboard, but the Jackson's email to your</p> <p>8 boss and to the chief of the entire Corps of</p> <p>9 Engineers says "Passing along the daily DAPL</p> <p>10 update"; and then he says, "Have provided a draft</p> <p>11 of the press release to accompany the special use</p> <p>12 permit decision. Lowry will work this across the</p> <p>13 IA."</p> <p>14 What is IA?</p> <p>15 A. Interagency.</p> <p>16 Q. And what does that mean?</p> <p>17 A. Well, I mean, I guess he would best</p> <p>18 know what it means, but, you know, I believe that</p> <p>19 he's referring to the conversation that I was</p> <p>20 having with the Department of Justice and</p> <p>21 Department of the Interior.</p> <p>22 Q. And then so, okay.</p> <p>23 We'll ask General Jackson what that</p> <p>24 means, what he thought it meant, but he said you</p> <p>25</p>
<p style="text-align: right;">Page 223</p> <p style="text-align: center;">Crook</p> <p>1 Q. Right.</p> <p>2 Mr. Crook, let's go to 425, Exhibit</p> <p>3 425. Okay. There's an attachment here we'll go</p> <p>4 talk about in a minute, the storyboard of</p> <p>5 September 15, 2016; and, again, Colonel Tedeschi</p> <p>6 is sending it to Major Jackson and Miss Auguliera</p> <p>7 and then General Jackson forwards it on to Madam</p> <p>8 Secretary and chief.</p> <p>9 So here we are again Jackson sending</p> <p>10 it to the Assistant Secretary of the Army for</p> <p>11 Civil Works and to the chief of engineers copying</p> <p>12 you and some other people.</p> <p>13 So you --</p> <p>14 A. Can I finish reading his email?</p> <p>15 Q. Yeah. Let me know when you're done.</p> <p>16 A. Can you scroll up a little bit.</p> <p>17 Thank you. Okay. Can you scroll down a little</p> <p>18 bit. Actually, just up a little bit first.</p> <p>19 Okay. Thanks. Okay.</p> <p>20 Q. Tell me when you're done.</p> <p>21 A. I'm sorry. Can you go to the top of</p> <p>22 General Jackson's email. I didn't get a chance</p> <p>23 to fully read that. Okay. Can you scroll up a</p> <p>24 little bit. It's partially obscured. Thank you.</p> <p>25</p>	<p style="text-align: right;">Page 225</p> <p style="text-align: center;">Crook</p> <p>1 are going to work this across, whatever that</p> <p>2 means, and the White House tomorrow for final</p> <p>3 clearance, right?</p> <p>4 A. I believe he is referring to the</p> <p>5 White House, yes.</p> <p>6 Q. "We will adjust plans based on</p> <p>7 guidance given."</p> <p>8 So when I asked you about the draft</p> <p>9 press release that was developed by Miss Gaskill</p> <p>10 and forwarded to you, you weren't sure what you</p> <p>11 did or had any further involvement in the press</p> <p>12 release.</p> <p>13 Here General Jackson is referring to</p> <p>14 you as being the principal liaison on this issue</p> <p>15 to a bunch of federal agencies and the White</p> <p>16 House, right?</p> <p>17 A. Well, it says what it says, right.</p> <p>18 That I will work this with the interagency and</p> <p>19 the White House.</p> <p>20 Q. Is General Jackson just wrong and</p> <p>21 making all this up or was that your role?</p> <p>22 A. He knew that I was having regular</p> <p>23 communications with the interior department, DOJ</p> <p>24 and the White House about these issues.</p> <p>25</p>

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2 Q. Did you have any reason to, when you

3 received this, because you're copied on this, to

4 say, wow, wait a minute. That's suggesting

5 something that's not true?

6 A. No, I believe that I did discuss

7 these issues with Interior, Justice and the White

8 House.

9 Q. Well, it's not just discussing,

10 according to Jackson, because there's going to be

11 a final decision and the Corps storyboard we read

12 earlier talks about it being made on a Friday, an

13 Friday, September 16th as a matter of fact is

14 what the storyboard just told us.

15 Here we're talking about 7:12 p.m.

16 the day before, and you tell me what you're

17 really telling us that you had no involvement on

18 a deadline or you did; and if so, what did you

19 do?

20 MS. ZILLOLI: Objection,

21 argumentative, misstates testimony.

22 A. At this time period, I was having

23 daily discussions with staff at the White House

24 and the other agencies and I would have discussed

25 this issue with them.

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1 Crook

2 I don't know whether I emailed them

3 a draft of the press lease, whether I called them

4 about it. I just don't remember the specifics

5 discussions, but I have no reason to disagree

6 that I did, you know, engage in discussion or

7 ordination with the interagency group that was

8 involved in the White House.

9 Q. So Ed Jackson says you will work

10 this across the agencies and the White House and

11 he says for final clearance.

12 So were you tasked with getting

13 their sign-off or final input on something?

14 A. I was tasked with keeping them

15 informed and making sure we could address any

16 concerns and questions they had about our

17 proposed path forward.

18 Q. Well, how about what General Jackson

19 says you were doing.

20 Did you do that or not? Did you get

21 final clearance?

22 A. I didn't ask them for final

23 clearance, no.

24 Q. Did you ever respond to General

25 Jackson and said Ed, that's not right. It's not

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1 Crook

2 what I'm doing. I'm just keeping them posted.

3 Did you ever see that?

4 A. I don't recall saying that.

5 Q. Okay.

6 Important because the chief of

7 engineers and the assistant secretary of the Army

8 are told by Jackson what you're doing and you

9 were doing it. You were talking to those folks

10 right then and had been for a number of days you

11 said.

12 Now that you do remember doing that

13 and -- did they tell you don't do it or did they

14 say it looks okay, Lowry?

15 MS. ZILLOLI: Objection. Counsel is

16 testifying and misstates testimony.

17 Q. It's a question, Mr. Crook.

18 A. I recall that the White House had

19 questions about this planned announcement and the

20 potential impacts of it, but I don't recall

21 specifically what else was in the conversation.

22 Q. Okay.

23 So as of 7/12/p.m., September 15th,

24 was a decision made to issue the special use

25 permit?

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1 Crook

2 A. I don't know and I don't know when I

3 saw this email either.

4 Q. Okay.

5 Let's go to the attachment, which is

6 this daily DAPL report prepared by the Army Corps

7 of Engineers.

8 Would you read first the commanders,

9 the Northwest Omaha commander assessment.

10 A. Okay. Okay.

11 Q. The last -- pardon me. The

12 sentence, second sentence, "Based on personnel

13 personal correspondence with Chairman

14 Archambault."

15 This is personal correspondence by

16 Henderson is the way it reads, correct?

17 A. Yes.

18 Q. "It is expected that the SRST will

19 favorably receive the SUP. The SUP will be

20 approved and a press release will be published on

21 Friday September 16. The district will continue

22 to monitor media coverage of the SUP and press

23 release," right?

24 A. That's what it says, yes.

25 Q. Okay.

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<p style="text-align: right;">Page 230</p> <p>1 Crook</p> <p>2 Is that wrong or is it right?</p> <p>3 A. I don't recall -- I don't recall</p> <p>4 whether that Friday discussion or use permit or</p> <p>5 press release was issued or not.</p> <p>6 Q. Can we go to Exhibit 428, please.</p> <p>7 If you just look at the email, there you go.</p> <p>8 Mr. Crook, take a moment and read</p> <p>9 this. It starts with a Jackson email to you.</p> <p>10 Press release final. "Lowry, attached is the</p> <p>11 final edition in the press release. Spoke with</p> <p>12 John." I believe that's Henderson. "He is being</p> <p>13 pressed by delegation and Chairman Archambault to</p> <p>14 send this out today, so he intends on doing so."</p> <p>15 Looks like you immediately took,</p> <p>16 literally immediately, took that email and</p> <p>17 forwarded it on to Dan Utech in the Executive</p> <p>18 Office of the President and Tommy Boudreau, the</p> <p>19 Office of the Interior Secretary Chief of Staff,</p> <p>20 and you said FYI on timing, right?</p> <p>21 A. Yes.</p> <p>22 Q. Then you forwarded -- that was</p> <p>23 forwarded from Mr. Utech to a number of people,</p> <p>24 including this Rohan Patel that you mentioned</p> <p>25 earlier being friends with and also Tara</p>	<p style="text-align: right;">Page 232</p> <p>1 Crook</p> <p>2 A. I don't recall somebody taking an</p> <p>3 issue with those words.</p> <p>4 Q. Okay. All right.</p> <p>5 If we could -- so, Mr. Crook, on</p> <p>6 Friday, September 16th, as the Corps indicated in</p> <p>7 its storyboard, which was sent to chief of</p> <p>8 engineers and Semonite and to Miss Darcy, did</p> <p>9 that hold true?</p> <p>10 A. I don't recall. Things were very</p> <p>11 fluid at that time, so I don't recall what</p> <p>12 happened after that was sent around late Friday.</p> <p>13 Q. So you don't recall whether or not</p> <p>14 the Corps issued a press release and sent</p> <p>15 Chairman Archambault a proposed special use</p> <p>16 permit? You don't recall that at all?</p> <p>17 A. I just remember a lot of back and</p> <p>18 forth about the special use permit during that</p> <p>19 time, and so I don't remember what specifically</p> <p>20 happened after that.</p> <p>21 Q. Can we look at, please, Exhibit 427.</p> <p>22 Mr. Crook, this is an email from</p> <p>23 Donald Jackson on Friday, September 16, 4:25 p.m.</p> <p>24 to you and it's a short message: "Lowry,</p> <p>25 attached is the final edition of the press</p>
<p style="text-align: right;">Page 231</p> <p>1 Crook</p> <p>2 Billingsley, the Special Assistant to the</p> <p>3 President that you noted earlier in the White</p> <p>4 House, and you said or she asked you was the</p> <p>5 congressional delegation notified.</p> <p>6 So you were busy coordinating with</p> <p>7 inter-agencies and other, just as Ed Jackson said</p> <p>8 you were. You were doing that, and here is the</p> <p>9 press release.</p> <p>10 Had this press release that was</p> <p>11 forwarded by Jackson been modified in any</p> <p>12 respects?</p> <p>13 A. I would have to compare it to see.</p> <p>14 Q. Well, how about in terms of the</p> <p>15 wording that I was asking you, if you had any</p> <p>16 concerns about. Let's look in the title.</p> <p>17 The U.S. Army Corps Grants Special</p> <p>18 Use permit. First paragraph, "Today the Army</p> <p>19 Corps issued a special use permit," and so same</p> <p>20 thing, all that phrasing.</p> <p>21 Anybody at this point take issue</p> <p>22 with the use of those words?</p> <p>23 MS. ZILLOLI: Objection,</p> <p>24 speculation.</p> <p>25 Q. To your knowledge?</p>	<p style="text-align: right;">Page 233</p> <p>1 Crook</p> <p>2 release. Spoke with John. He is being pressed</p> <p>3 by the delegation and Chairman Archambault to</p> <p>4 send it out today, September 16th. So he intends</p> <p>5 on doing so. He is sending final copies to each</p> <p>6 of these folks at this time and will post at 2000</p> <p>7 EST today."</p> <p>8 So in the attached, attachment</p> <p>9 reference, it says SRST SUP with OGC edits.</p> <p>10 Who's the OGC?</p> <p>11 A. I'm sorry. Show me where you're</p> <p>12 talking about.</p> <p>13 Q. If you look in the email.</p> <p>14 A. Oh, the name of the attachment.</p> <p>15 Okay.</p> <p>16 Q. See right there.</p> <p>17 A. I actually don't know whether that's</p> <p>18 office of general counsel of the Army or the</p> <p>19 Corps of Engineers.</p> <p>20 Q. Do each have their own office of</p> <p>21 general counsel?</p> <p>22 A. The Corps -- I think they call if</p> <p>23 the chief counsel in the Corps but they both have</p> <p>24 a, yes, they both have a counsel.</p> <p>25 Q. Are they both referred to to the</p>

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<p style="text-align: right;">Page 234</p> <p style="text-align: center;">Crook</p> <p>1 public as the office of general counsel?</p> <p>2 A. I don't think that's what the office</p> <p>3 of chief counsel is normally referred to.</p> <p>4 Q. Okay.</p> <p>5 What is your answer, Mr. Crook?</p> <p>6 What does OGC stand for?</p> <p>7 MS. ZILLOLI: Objection. Asked and</p> <p>8 answered.</p> <p>9 MR. SEBY: No, it's not.</p> <p>10 A. Office of general counsel.</p> <p>11 Q. Where, in what agency is the OGC</p> <p>12 being referred to here by Major Jackson to you?</p> <p>13 MS. ZILLOLI: Objection, speculation</p> <p>14 and asked and answered.</p> <p>15 A. I guess what I'm getting at is</p> <p>16 although the Corps technically office of chief</p> <p>17 counsel, I don't know who named this document and</p> <p>18 whether they may find distinctions or they know</p> <p>19 which lawyer office had signed off. I just don't</p> <p>20 know. That's why, you, I'm saying I don't know</p> <p>21 that it was Department of the Army, but I would</p> <p>22 refer to OGC as Army counsel, but I don't know</p> <p>23 what the person drafting this document or naming</p> <p>24 this document did.</p> <p>25</p>	<p style="text-align: right;">Page 236</p> <p style="text-align: center;">Crook</p> <p>1 Could we go to Exhibit 429.</p> <p>2 So, Mr. Crook, this exhibit is an</p> <p>3 email that is originally from Major General</p> <p>4 Jackson, and he is sending it to it's called a</p> <p>5 DAPL spotrep.</p> <p>6 What is spotrep?</p> <p>7 A. I know sitrep is situational report.</p> <p>8 I don't remember what spotrep, what the spotrep</p> <p>9 is an acronym for. The Army uses a lot acronyms.</p> <p>10 Q. Okay.</p> <p>11 So it is addressed to Madam</p> <p>12 Secretary, Chief Semonite and Lowry. You made</p> <p>13 the headline here.</p> <p>14 So Jackson is addressing this email</p> <p>15 to you three, copying to some individuals, and</p> <p>16 spotrep from Colonel Henderson, and I guess we</p> <p>17 don't know what spotrep means, do we?</p> <p>18 A. It's some sort of report but I don't</p> <p>19 remember what the spot stands for.</p> <p>20 Q. Okay.</p> <p>21 May be helpful today in discussions</p> <p>22 with the IA. There's that interagency group</p> <p>23 reference again I think, right?</p> <p>24 A. Yes, I believe that is referring to</p> <p>25</p>
<p style="text-align: right;">Page 235</p> <p style="text-align: center;">Crook</p> <p>1 Q. Okay.</p> <p>2 Do you think Ed Jackson knew or</p> <p>3 should we ask him?</p> <p>4 A. I don't know what he knew or didn't</p> <p>5 know, as far as, you know, which office this was</p> <p>6 referring to.</p> <p>7 Q. I don't know who else we could ask</p> <p>8 because this email is only between the two of</p> <p>9 you.</p> <p>10 So you were the guy that, the chief</p> <p>11 of the engineers and the assistant secretary was</p> <p>12 told by General Jackson you were shepherding this</p> <p>13 across the line.</p> <p>14 So you don't know whose edits these</p> <p>15 are?</p> <p>16 A. No.</p> <p>17 MS. ZILLOLI: Objection.</p> <p>18 Argumentative.</p> <p>19 Q. Mr. Crook?</p> <p>20 A. I don't know who all edited this</p> <p>21 document.</p> <p>22 Q. You do not?</p> <p>23 A. No.</p> <p>24 Q. Thank you. All right.</p> <p>25</p>	<p style="text-align: right;">Page 237</p> <p style="text-align: center;">Crook</p> <p>1 interagency.</p> <p>2 Q. Okay.</p> <p>3 Next paragraph, "Colonel Henderson</p> <p>4 received a call from Senator Heitkamp. The</p> <p>5 senator is of the opinion it's time to move</p> <p>6 everyone off the north side of the river and is</p> <p>7 asking us to work with the SRST, BIA," Bureau of</p> <p>8 Indian Affairs, "and federal law enforcement to</p> <p>9 develop a plan for this soonest."</p> <p>10 Do you want to go ahead and read the</p> <p>11 rest of the email, if you wish.</p> <p>12 A. Sure. Can you scroll down, please.</p> <p>13 Up a little bit. Yeah, right there. Can you</p> <p>14 scroll down a little bit more, please. Okay.</p> <p>15 Q. Mr. Crook, do you remember when we</p> <p>16 were asked, we were talking about the draft of</p> <p>17 the press release that was sent to you, the first</p> <p>18 time at least per the exhibits that we've talked</p> <p>19 about?</p> <p>20 A. Yes.</p> <p>21 Q. Do you remember me asking you about</p> <p>22 the choice of the words that whoever wrote that,</p> <p>23 and maybe Miss Gaskill started it because she</p> <p>24 sent it to you. We don't know though you said.</p> <p>25</p>



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238:9-239:8  
602, 611ND OBJ.:  
Relevance

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We also don't know who edited the document as you just testified.

And I asked you then where did those words "issued," "granted," "permit allows," where did they come from, and you didn't know, and you told me that you didn't quibble with the use of those terms.

So I want to ask you now, if we could look above Major General Jackson's email to the secretary, Chief Semonite and to you and Miss Darcy on Wednesday September 21, which is the Wednesday after the Friday when the press release was put out and the proposed permit was sent to Chairman Archambault, Miss Darcy amazingly says back to Ed Jackson and to you alone cuts off all the people that the General Jackson's email was sent, which included the chief of the engineers, and all the counsel there, and Miss Darcy says, "So there is no permit in place for the south encampment even though we announced Friday night that there was."

What's that all about?

MS. ZILLOLI: Objection, vague, speculation.

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Q. What is she talking about?

A. I believe the words speak for itself, but it appears to express a concern that there's inconsistency between the status of the permit and what was announced the Friday night before.

Q. Yeah, it sure does.

In fact, you know, you look at the provision of General Jackson's email where he's giving background, and then he has a section that says Omaha responses, and it says, number one, "The permit is only for the south side of the river with associated conditions."

Next sentence, Mr. Crook, "The tribe has not signed the acknowledgment for this permit yet," and we're talking on, I don't know, five days later, "Nor met the liability requirements. So there is currently no permit in place."

Do you think that's what Miss Darcy is reacting to with her puzzlement about what's going on?

MS. ZILLOLI: Objection, speculation.

Q. I don't know. She's asking you.

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Crook

A. It appears -- that's what it appears to me.

Q. Well, what did you tell her?

A. I don't recall how I responded to this question or email.

Q. Okay.

Just like the last time Miss Darcy posed a question to you in an email you didn't recall what you said or responded to her, right?

MS. ZILLOLI: Objection. Argumentative.

A. Yeah, I don't recall the specific conversation that followed.

Q. At all?

A. My general practice would have responded somehow to this issue but I still don't recall specifically how and when I did.

Q. Mr. Crook, we have been assured by your counsel and in front of the Court of the United States Magistrate Judge the Government's position in this case that all documents of yours have been produced.

I don't have an email where you responded to this by email.

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Crook

So what did you say to her verbally?

A. I don't recall specifically what I said to her verbally.

Q. So we should ask her because I guess she's the only one that would know, right?

MS. ZILLOLI: Objection, speculation and argumentative.

A. About a specific conversation between me and her I guess she would be the other person who may know.

Q. Thank you. Okay.

Let's go to Exhibit 430.

MS. ZILLOLI: I think we were going to take a break, if that would be okay.

MR. SEBY: I apologize, Ms. Zilloli. Let's take our break and go off the record.

THE VIDEOGRAPHER: We're off the 9:01 p.m. UTC, 5:01 Eastern.

(A break from the record was taken at this time.)

THE VIDEOGRAPHER: Back on the record 5:17 Eastern, 9:17 p.m. UTC.

Q. Mr. Crook, I want to turn now to Exhibit 430, please.

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<p style="text-align: right;">Page 242</p> <p>Crook</p> <p>A. Okay.</p> <p>Q. This is an email that is two parts. It begins with email from you on Thursday, September 22nd, and you send it to a number of people in the executive office of the President and the White House and the Department of Justice, the chief of staff the secretary of the interior, the solicitor of the secretary of the interior, the assistant secretary of the Department of the Interior, and some people I don't, oh, at CEQ.</p> <p>And your -- and Miss Darcy is copied on your email and says, "The narrative in the attachment is from last Friday," which by my calculation was the day of September 16th, which was the day that the Corps issued its press release and sent Chairman Archambault a proposed special use permit.</p> <p>So you're saying "The narrative is the attachment from last Friday but FYSA, here's the map of the area that we are using."</p> <p>What are you doing, Mr. Crook? What is that all about? I'm confused by what you're saying.</p>	<p style="text-align: right;">Page 244</p> <p>Crook</p> <p>speculation.</p> <p>MR. SEBY: I'm asking what he means. I'm not speculating.</p> <p>A. I guess I mean that Dan Utech, for example, was involved in regular communications and updates about the situation.</p> <p>There were other people at the White House who had less regular involvement and probably had less knowledge of the details.</p> <p>Q. Well, were these the same people you were consulting with on whether the Corps should issue a special use permit for allowing the use of their property for protests that had been going on for several months; is that what -- you asked for their input, but they didn't have the basic understanding of what you were asking their input on?</p> <p>MS. ZILLOLI: Objection. Assumes facts.</p> <p>A. You'd have to ask them what their understanding was at the time. I only know what I shared with different people that I can remember during this time period.</p> <p>Q. So I don't have any other basis to</p>
<p style="text-align: right;">Page 243</p> <p>Crook</p> <p>A. And you had asked earlier about a map and correspondence on a map.</p> <p>I believe that there was a request from the White House, now this refreshes my recollection for a map of the area showing what was Corps land, what was tribal reservation land and where the protests were.</p> <p>Q. Does that mean they had no clue before you asked or they asked you?</p> <p>A. I don't know exactly what different folks in the White House knew or didn't know other than what I had communicated to them.</p> <p>So when you say they --</p> <p>Q. Well, I'm just using the "they" to refer to the group you mentioned specifically, folks in the White House.</p> <p>A. I think that there were differing levels of knowledge of the details of the protests and the locations and the property.</p> <p>Q. What does that mean? They didn't know who's land was which, where the camps were, where the reservation was, wasn't, and that kind of details; is that what you're talking about?</p> <p>MS. ZILLOLI: Objection,</p>	<p style="text-align: right;">Page 245</p> <p>Crook</p> <p>ask you this question.</p> <p>So I'm going to ask it based upon my limited knowledge about this instance, which is here we are almost a week after the Corps issued a public press release and sent Chairman Archambault a proposed permit for his signature and satisfaction of conditions of compliance. Already, it's going on for a week and attached to that was a map of the area to which the Corps was purportedly proposing to give a special use permit.</p> <p>So you are taking that map and saying here it is, what we sent, what we issued, so to speak, or made a public announcement about, and you're sending it to this group.</p> <p>Why did you send it to this group?</p> <p>MS. ZILLOLI: Objection. Misstates testimony and evidence. Assumes facts.</p> <p>Q. Mr. Crook, I don't know why you sent it because there's no email below. Nobody asked to you, to my knowledge.</p> <p>What it looks like to me, unless you correct my understanding or inform my understanding, you initiated this communication</p>

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1 Crook

2 and said here's a map. What we've already used?

3 A. I believe that I was responding to

4 an oral request from somebody at the White House

5 for a map.

6 Q. Who?

7 A. I don't recall whether it was Dan or

8 Katherine or somebody else, frankly, at the White

9 House.

10 Q. I wonder if it's not Katherine

11 Ferguson.

12 Do you know? Do you want to think

13 about that and make sure you comment accordingly

14 because the next, the only response you got was

15 from Katherine Ferguson to you and copied to

16 Larry Roberts at the Department of the Interior.

17 Do you see that?

18 A. Yes.

19 Q. A small chain to get us going, to

20 get us started on creating a map. Lowry, I'm

21 guessing the BIA team has maps galore.

22 Could you ask them to pull and share

23 something that roughly corresponds with the area

24 on the attached?

25 Lowry, could you find a version of

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1 Crook

2 this map with higher resolution and provide

3 clarity on Corps boundaries and borders, okay.

4 So is she the one that asked you to

5 spend a map in the first place?

6 A. She is the one who followed up. I

7 don't recall who made the initial request for the

8 a map in the first place.

9 Q. And remind me, I think you said that

10 Miss Ferguson is the Chief of Staff for the White

11 House Domestic Policy Task force.

12 A. Domestic policy council.

13 Q. Domestic policy council.

14 Is she the chief staff for that?

15 A. That was her title, yes.

16 Q. So she's an employee in the Office

17 of the President.

18 Is she located in the White House?

19 A. She may be located in the Eisenhower

20 Executive Office Building next to the White

21 House.

22 Q. The old executive office building?

23 A. That's what they used to call the

24 old executive, right.

25 Q. So if you're a chief of staff of the

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1 Crook

2 President's domestic policy council, who do you

3 report to?

4 MS. ZILLOLI: Objection,

5 speculation.

6 Q. To your knowledge, Mr. Crook?

7 A. You report to the chair of the

8 domestic policy council.

9 Q. Do you know who that was at the

10 time?

11 A. I'm sorry. I'm blanking on her

12 name. I can picture her but I just happen to be

13 blanking on her name right now.

14 Q. Okay.

15 Do you recall any members of the

16 domestic policy council at this time?

17 A. The domestic policy council is a

18 weird entity in that there's staff, and then

19 there is technically members that are cabinet

20 members of different agencies, but it doesn't

21 really convene in a council in that way and in

22 practice very often. So there's other staff on

23 the domestic policy council in addition to the

24 chair.

25 Q. You mentioned cabinet officials.

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1 Crook

2 Which ones do you recall being on

3 the President's domestic policy council?

4 A. I don't recall specifically all of

5 the cabinet members who are technically on it,

6 but it would be generally the major cabinet

7 domestic agencies, so.

8 Q. Let me ask you this, Mr. Crook, do

9 you know whether Secretary Sally Jewell was a

10 member of that domestic policy council?

11 A. I believe she was.

12 Q. Was Secretary Eric Fanning?

13 A. I don't know that the secretary of

14 the Army is a member of the council.

15 Q. Was the Attorney General of the

16 United States?

17 A. I believe that the attorney general

18 was.

19 Q. Okay.

20 Anyone else stand out amongst those

21 that you do recall?

22 A. Stand out. I mean, there are other

23 domestic, you know, cabinet agencies that I think

24 are likely on the council but.

25 Q. Who are you thinking of?

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<p style="text-align: right;">Page 250</p> <p>1 Crook</p> <p>2 A. USDA, Department of Energy,</p> <p>3 Department of Commerce. I don't know. I mean,</p> <p>4 other domestic cabinet, you know, members.</p> <p>5 Q. Okay.</p> <p>6 Anybody of a lessor officer than a</p> <p>7 cabinet official?</p> <p>8 A. There may be other officials in the</p> <p>9 White House that are technically listed as</p> <p>10 members of the domestic policy council. I just</p> <p>11 don't remember who.</p> <p>12 Q. Would the Department of Homeland</p> <p>13 Security secretary have been on that council?</p> <p>14 A. I don't know.</p> <p>15 Q. Do you know who the secretary was at</p> <p>16 that time?</p> <p>17 A. I believe it was Jay Johnson, but I</p> <p>18 don't recall the specific, who was specifically</p> <p>19 there at that time.</p> <p>20 Q. Got it.</p> <p>21 My understanding is accurate and</p> <p>22 consistent with yours.</p> <p>23 A. Okay.</p> <p>24 Q. Consistent, excuse me. That Mr.</p> <p>25 Johnson was also there.</p>	<p style="text-align: right;">Page 252</p> <p>1 Crook</p> <p>2 map from last Friday, which is September 16th,</p> <p>3 and you're referring to information that was</p> <p>4 provided detailing the special use permit area</p> <p>5 and the proposed permits, and you say this is</p> <p>6 what we are using.</p> <p>7 And if we can go to the attachment</p> <p>8 and, Mr. Crook, if you could note that we're</p> <p>9 talking about a September 16th map, and you are</p> <p>10 saying that this map is what you used and what</p> <p>11 was from last Friday, September 16. In fact,</p> <p>12 it's dated that way.</p> <p>13 MR. SEBY: Could you Rachel hone in</p> <p>14 on the map so we could see it just a little</p> <p>15 better. There's a legend and area specifically.</p> <p>16 Great. Oh, perfect.</p> <p>17 Q. Mr. Crook, let's look at the legend.</p> <p>18 The legend is very important, And we have, first</p> <p>19 off, we have a yellow dot that says protest</p> <p>20 location.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Did the special use permit that you</p> <p>24 proposed, the Corps proposed to the Standing Rock</p> <p>25 the week prior of this map, did it include the</p>
<p style="text-align: right;">Page 251</p> <p>1 Crook</p> <p>2 Anybody from subagencies of any of</p> <p>3 those cabinet officials present, like the</p> <p>4 director of the Federal Bureau of Investigation,</p> <p>5 for example?</p> <p>6 A. I'm sorry. You said present?</p> <p>7 Q. The question was, to your knowledge,</p> <p>8 was there any other federal official who was a</p> <p>9 lessor executive officer than, and lessor by</p> <p>10 terms of seniority not anything else, but lessor,</p> <p>11 you know, the way that courts refer to as</p> <p>12 inferior federal officers, noncabinet officials,</p> <p>13 were there any those type of people on the</p> <p>14 council and I use --</p> <p>15 A. I don't recall any specific</p> <p>16 subcabinet officials, which I think listed</p> <p>17 technically on the domestic policy council; but</p> <p>18 again, I don't, I don't recall all the specific</p> <p>19 members.</p> <p>20 Q. Okay.</p> <p>21 So Miss -- your email to the group</p> <p>22 that individuals in the Department of Interior,</p> <p>23 Department of Justice and the CEQ and a group of</p> <p>24 them from the White House included a map, and you</p> <p>25 said that in your email to them, that this is the</p>	<p style="text-align: right;">Page 253</p> <p>1 Crook</p> <p>2 area where that dot is?</p> <p>3 A. I don't believe it did.</p> <p>4 Q. And that makes sense because if you</p> <p>5 look at the legend, and it gives the boundary of</p> <p>6 the Corps' property, which is a blue line, that</p> <p>7 yellow dot is outside of that, isn't it?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 So there is a protest location</p> <p>11 that's not featured on Corps property. So we</p> <p>12 don't need to talk about that.</p> <p>13 Then there is an area, first of all,</p> <p>14 let me ask you, do you see this meandering white</p> <p>15 line, which is known on the legend as the</p> <p>16 Cannonball River?</p> <p>17 A. Yes.</p> <p>18 Q. And it ultimately makes its way to</p> <p>19 the Missouri River, doesn't it?</p> <p>20 A. Yes.</p> <p>21 Q. And there is an area north of the</p> <p>22 Cannonball River and there's an area south of the</p> <p>23 Cannonball River which is in the blue line which</p> <p>24 is in the Corps of Engineers project boundary.</p> <p>25 Do you see that?</p>

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254:7-19  
602. calls for  
legal  
conclusion  
701-02

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1 A. Yes.

2 Q. And there are areas that have a red

3 checked hash mark symbol placed on them that are

4 both north and south, aren't they?

5 A. Yes.

6 Q. And the legend in the Corps map of

7 September 16, 2016 says, "Unpermitted camp areas

8 -- area," right?

9 A. Yes.

10 Q. So is another way to interpret this,

11 let me know if you agree with me that this map

12 tells us that there are unpermitted camp areas

13 located as of September 16th on Corps of

14 Engineers properties both north of the Cannonball

15 River and south of the Cannonball River.

16 A. It does show what it calls

17 unpermitted camp areas north and south of the

18 Cannonball River on Corps property.

19 Q. Thank you. Right. Okay.

20 So back to Miss Ferguson's email to

21 you, responding to you and copying only Mr.

22 Roberts from the Department of the Interior.

23 I wonder if you could, please,

24 because I don't have any further emails related

25

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Crook

1 to this dialogue you're having with

2 Miss Ferguson.

3 What happened? What did you do?

4 A. I don't recall what followed this.

5 I think I sent what I had and I don't know what,

6 if any, follow-up there was between her and Larry

7 Roberts on making a better map.

8 Q. In your career as the principal

9 deputy assistant secretary of the Army for Civil

10 Works, was this the last time you had any manner

11 of communication with Miss Ferguson?

12 A. No.

13 Q. What kind of communication did you

14 have with Miss Ferguson after the date of this

15 email with respect to the Corps property at the

16 Oahe project or the Dakota Access Pipeline?

17 A. I think she was likely on, I think

18 she was on group, some group calls where I and

19 others would provide the status of what was going

20 on on the ground.

21 Q. While she was on group calls, did

22 you have direct communication or discussion with

23 her ever again?

24 A. Yes.

25

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1 Q. And in the context of that, what was

2 she doing? Why was she involved?

3 A. She had been tasked with, I referred

4 earlier to the broader engagement with the tribal

5 community on policy issues and potential changes

6 to the law.

7 She had been tasked with

8 coordinating the interagency, the effort, that

9 effort for the White House.

10 Q. Did her role include any manner of

11 consideration or discussion of whether or not to

12 continue to consider or grant or deny an easement

13 for the pipeline over Corps property or

14 management?

15 A. I don't recall her specifically

16 engaging on that question.

17 Q. Okay.

18 Ever?

19 A. Like I said, she could have been on

20 group calls when the issue came up but --

21 Q. No, no --

22 A. -- I just don't recall that being

23 her focus ever.

24 Q. I'm not asking whether she was on

25

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Crook

1 group calls where somebody else talked about

2 that.

3 I'm asking you about your direct

4 involvement in communications with Miss Ferguson

5 after this email with respect to the issue now of

6 whether the Corps should take any objection

7 positive or negative on the easement pending for

8 the Dakota Access Pipeline that was put in a mode

9 of reconsideration based upon the agency's, the

10 three agencies' September 9, 2016 press release

11 or joint statement? Excuse me.

12 A. And I'm saying that I don't recall

13 any specific conversations with her that were

14 focused on that issue.

15 Q. Okay.

16 (Interruption from the record.)

17 MR. SEBY: Can we go off the record

18 while this is fixed.

19 MS. ZILLOLI: Yes.

20 THE VIDEOGRAPHER: We're off the

21 9:38 p.m., UTC, 5:38 p.m. Eastern.

22 (A short break was taken at this

23 time.)

24 THE VIDEOGRAPHER: Back on the

25

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<p style="text-align: right;">Page 258</p> <p>1 Crook</p> <p>2 record. 5:39 p.m., Eastern, 9:39 p.m., UTC.</p> <p>3 Q. Mr. Crook, I was asking you before</p> <p>4 we needed to take a short break, technical</p> <p>5 issues, whether or not you ever heard from</p> <p>6 Miss Ferguson further with respect to her</p> <p>7 interest in having additional maps of the area.</p> <p>8 A. I don't recall what any further</p> <p>9 communications or efforts on the map were beyond</p> <p>10 when I sent this over to her.</p> <p>11 Q. Okay.</p> <p>12 Did you ever meet with her again in</p> <p>13 person?</p> <p>14 A. Yes.</p> <p>15 Q. And she never brought up this map</p> <p>16 issue or her interest in because she says "A</p> <p>17 small chain to get us started on creating a map."</p> <p>18 Sounds like she wanted to launch a</p> <p>19 project involving development of avenue map and</p> <p>20 she posted posed a question to Mr. Roberts and a</p> <p>21 question to you.</p> <p>22 And I understand you're telling me</p> <p>23 even though you met and spoke with her on</p> <p>24 multiple occasions after this email, this topic</p> <p>25 never came up again?</p>	<p style="text-align: right;">Page 260</p> <p>1 Crook</p> <p>2 Let's go to Exhibit 400 -- pardon</p> <p>3 me. Let's go to Exhibit 318.</p> <p>4 MS. HYMEL: Give me one second.</p> <p>5 MR. SEBY: Says.</p> <p>6 Q. Mr. Crook, would you please take a</p> <p>7 moment and read this email chain, which is an</p> <p>8 email that starts with an email from an</p> <p>9 individual named Joel Rostberg, whose title,</p> <p>10 according to the email from him, is assistant</p> <p>11 emergency manager, Morton County, North Dakota</p> <p>12 and he's writing to you.</p> <p>13 A. I'm sorry. Can you make it a little</p> <p>14 bit bigger, please. Thank you.</p> <p>15 Q. Do you see Mr. Rostberg in his</p> <p>16 title?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 And his email simply says right</p> <p>20 there, "subject DAPL Opord 33, attached is Opord</p> <p>21 33 for the operational period September 23</p> <p>22 through September 24."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. What's an opord?</p>
<p style="text-align: right;">Page 259</p> <p>1 Crook</p> <p>2 A. I'm saying that I know she was</p> <p>3 tasked with trying to get a better map.</p> <p>4 I know that I sent her what -- this</p> <p>5 refreshed my recollection what I sent her. I</p> <p>6 don't recall the specifics of any follow-up</p> <p>7 beyond this.</p> <p>8 Q. So she asked you, "Can you send me a</p> <p>9 higher resolution map?"</p> <p>10 Did you do that?</p> <p>11 A. I don't recall whether or not I did.</p> <p>12 Q. Okay.</p> <p>13 So we have emails to your boss that</p> <p>14 you don't recall whether or not and how you</p> <p>15 responded.</p> <p>16 And now we have a request from the</p> <p>17 chief of staff of the President's domestic policy</p> <p>18 council and you also don't recall whether or how</p> <p>19 you responded; is that correct?</p> <p>20 MS. ZILLOLI: Objection.</p> <p>21 Argumentative.</p> <p>22 A. That is correct. I do not recall</p> <p>23 the specific response on the details of making</p> <p>24 the map.</p> <p>25 Q. Okay. All right.</p>	<p style="text-align: right;">Page 261</p> <p>1 Crook</p> <p>2 A. I think op stands for operation or</p> <p>3 operational, and I don't know what "ord" is</p> <p>4 responding to or what the acronym stands for.</p> <p>5 Q. Mr. Crook, are you aware as the</p> <p>6 principal deputy of the assistant secretary of</p> <p>7 the Army Civil Works that the Corps of Engineers</p> <p>8 prepares opords or not?</p> <p>9 A. Well, I don't know what it</p> <p>10 specifically stands for, so I'm not aware whether</p> <p>11 or not they have something that they call opord</p> <p>12 or a different acronym.</p> <p>13 Q. Okay.</p> <p>14 So Mr. Rostberg from Morton County,</p> <p>15 North Dakota the distribution list here is</p> <p>16 lengthy. Just skimming it there are a tremendous</p> <p>17 number of people within, a Morton County email</p> <p>18 address, and DOI, Department of Interior,</p> <p>19 Department of Justice, North Dakota State</p> <p>20 University, Mandan Police Department; Dunn</p> <p>21 County, North Dakota; Mandan City, Mandan; Cass</p> <p>22 County, North Dakota, FBI, big group here. Gosh,</p> <p>23 keep going down, DOJ, FBI, big group, big mix of</p> <p>24 state, local and federal people. Looks like Mr.</p> <p>25 Rostberg is being very liberal in his interest in</p>



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<p style="text-align: right;">Page 262</p> <p>1 Crook</p> <p>2 communicating with all manner of federal and</p> <p>3 state and local officials.</p> <p>4 Big deal issue time to North Dakota</p> <p>5 we know, and so that email was one individual</p> <p>6 included in Mr. Rostberg's email is an individual</p> <p>7 by the name of Danzeisen.</p> <p>8 Do you know who he is? Pardon me?</p> <p>9 I want to clarify my comment, which is a</p> <p>10 question.</p> <p>11 Pardon me. One of the recipients of</p> <p>12 this email is a Corps of Engineers individual</p> <p>13 named Todd Lindquist.</p> <p>14 Do you see that when you look up?</p> <p>15 A. Yes.</p> <p>16 Q. And Mr. Lindquist with the United</p> <p>17 States Army Corps of Engineers forwarded</p> <p>18 Mr. Rostberg's email to sheriff Dean Danzeisen,</p> <p>19 who is a county sheriff in North Dakota.</p> <p>20 Do you see that?</p> <p>21 A. I see it was forwarded to Danzeisen.</p> <p>22 I don't think that I know that he was the sheriff</p> <p>23 but.</p> <p>24 Q. All right.</p> <p>25 So then Lindquist then forwards that</p>	<p style="text-align: right;">Page 264</p> <p>1 Crook</p> <p>2 Henderson, Colonel Henderson, district council</p> <p>3 Thomas Tracy and Colonel James Startzell, who is</p> <p>4 the, I don't know if you know this or not, but he</p> <p>5 was the deputy district commander; is that -- do</p> <p>6 you agree with me?</p> <p>7 A. I believe that was his position in</p> <p>8 Omaha, yes.</p> <p>9 Q. Okay, good.</p> <p>10 So then if we go to the top of this</p> <p>11 email chain, Major Startzell, pardon me. I</p> <p>12 miss-referred to him. Major Startzell's replies</p> <p>13 to the email that he received from Mr. Fink and</p> <p>14 his, Major Startzell's email response includes</p> <p>15 copying Colonel Henderson and Thomas Tracy and</p> <p>16 Mr. Fink.</p> <p>17 And he says, "Thanks, Keith,"</p> <p>18 Mr. Fink. "I'll include some of the highlights</p> <p>19 in the DAPL update on Monday. All of this</p> <p>20 information basically confirms the commander's</p> <p>21 assessment that the camps are growing out of</p> <p>22 Standing Rock Sioux Tribe's control, and the</p> <p>23 chairman is probably going to try to use the SUP</p> <p>24 as a way to regain control of what he sees as</p> <p>25 legitimate protesters." Okay?</p>
<p style="text-align: right;">Page 263</p> <p>1 Crook</p> <p>2 forward to a fellow name Keith Fink, a colleague</p> <p>3 of yours at the Corps of Engineers, and Mr. Fink</p> <p>4 receives it from Mr. Lindquist and the Corps.</p> <p>5 Mr. Fink takes the email and sends</p> <p>6 it to Colonel Henderson, who is the district</p> <p>7 commander of the Omaha District with jurisdiction</p> <p>8 over North Dakota and the OIE project. He also</p> <p>9 sends it to Thomas Tracy, who is we talked about</p> <p>10 before is the district counsel for the Omaha</p> <p>11 District Corps of Engineers and copies it to</p> <p>12 general, pardon me, Lieutenant Colonel Startzell,</p> <p>13 who is the deputy district commander under</p> <p>14 Colonel Henderson.</p> <p>15 And Mr. Fink's message to Colonel</p> <p>16 Henderson says simply, "Sir, the attached is a</p> <p>17 law enforcement update on the DAPL protest</p> <p>18 camps."</p> <p>19 A. Can you scroll up, please. I'm</p> <p>20 sorry. I'm not seeing the part that you're</p> <p>21 reading. Okay. Thank you.</p> <p>22 Q. I'm sorry. There you go.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. So it's addressed again to</p>	<p style="text-align: right;">Page 265</p> <p>1 Crook</p> <p>2 A. Yes.</p> <p>3 Q. All right. Bear with me for a</p> <p>4 moment.</p> <p>5 So with respect to Major Startzell's</p> <p>6 email commenting on this law enforcement report</p> <p>7 that has been forwarded to him that was</p> <p>8 distributed by Morton County to a large group of</p> <p>9 state, local and federal law enforcement</p> <p>10 officials commenting on it as confirming the</p> <p>11 commander's assessment, Colonel Henderson's</p> <p>12 assessment.</p> <p>13 On that, Mr. Crook, were you aware</p> <p>14 that by September 25, 2016, it was the Army Corps</p> <p>15 of Engineer's position per the leadership in the</p> <p>16 Omaha District that the protest camp on Corps</p> <p>17 lands had grown out of the Standing Rock Sioux</p> <p>18 Tribe's control?</p> <p>19 MS. ZILLOLI: Objection. Misstates</p> <p>20 evidence. Assume facts.</p> <p>21 A. I at some point in time was aware</p> <p>22 that there were concerns about how much control</p> <p>23 over the situation the tribes, Standing Rock</p> <p>24 Sioux Tribe had, but, you know, I don't</p> <p>25 specifically recall when I was made aware of</p>

265:5-  
266:2  
611, 802

**ND OBJ.:**  
As to  
265:19-20,  
Relevance

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<p style="text-align: right;">Page 266</p> <p style="text-align: center;">Crook</p> <p>1 those concerns.</p> <p>2 Q. Mr. Crook, do you have any reason to</p> <p>3 disagree with the United States Army Corps of</p> <p>4 Engineer's district commander John Henderson's</p> <p>5 assessment on or prior to September 25, 2016 that</p> <p>6 the camps on Corps land were out of the control?</p> <p>7 MS. ZILLOLI: Objection. Misstates</p> <p>8 evidence. Assumes facts.</p> <p>9 A. I don't have any reason to disagree</p> <p>10 with his understanding of the situation.</p> <p>11 Q. Mr. Crook, was it ever the Standing</p> <p>12 Rock Sioux Tribe's responsibility to keep control</p> <p>13 of protests occurring on Corps of Engineer's</p> <p>14 property?</p> <p>15 MS. ZILLOLI: Objection to the</p> <p>16 extent it calls for a legal conclusion.</p> <p>17 A. We wanted their assistance in trying</p> <p>18 to keep the situation under control and we wanted</p> <p>19 their cooperation.</p> <p>20 What was their responsibility would</p> <p>21 be a question for them.</p> <p>22 Q. For who?</p> <p>23 A. The tribe.</p> <p>24 Q. Well, did the Corps of Engineers</p> <p>25</p>	<p style="text-align: right;">Page 268</p> <p style="text-align: center;">Crook</p> <p>1 permit, the Corps had issued a special use</p> <p>2 permit, and the special use permit allows</p> <p>3 protesters to remain on Corps land.</p> <p>4 Nine days later, at least nine days</p> <p>5 later, perhaps earlier, the district deputy</p> <p>6 district commander of the Omaha District is</p> <p>7 saying the Corps has lost control of the camps.</p> <p>8 What do you make of that?</p> <p>9 A. I don't read it to say the Corps has</p> <p>10 last control. It says the Standing Rock Sioux</p> <p>11 controls.</p> <p>12 Q. Pardon me. You're absolutely right</p> <p>13 and I appreciate that really important</p> <p>14 correction.</p> <p>15 The district commander of the Corps</p> <p>16 that worked with you on creating a proposed</p> <p>17 permit and a press release concluded that the</p> <p>18 Standing Rock Sioux Tribe given a proposed permit</p> <p>19 didn't have control over the protest camps on</p> <p>20 Corps land.</p> <p>21 What do you mean make of that?</p> <p>22 MS. ZILLOLI: Objection.</p> <p>23 Mischaracterizes testimony.</p> <p>24 Q. Well, correct me then, Mr. Crook.</p> <p>25</p>
<p style="text-align: right;">Page 267</p> <p style="text-align: center;">Crook</p> <p>1 ever ask them to be responsible for protesters on</p> <p>2 Corps of Engineers' property?</p> <p>3 MS. ZILLOLI: Objection,</p> <p>4 speculation. Foundation.</p> <p>5 A. I know there was a lot of back and</p> <p>6 forth between Colonel Henderson and the tribe,</p> <p>7 but I don't know what the specific, you know, all</p> <p>8 the specific requests that were made of the</p> <p>9 tribe.</p> <p>10 Just that he generally sought their</p> <p>11 cooperation in dealing with the protests.</p> <p>12 Q. So you don't know whether or not the</p> <p>13 Corps of Engineers explicitly told the Standing</p> <p>14 Rock that, you know, it's our land but you be</p> <p>15 responsible for what happens here?</p> <p>16 A. I don't know what the specific</p> <p>17 conversations were.</p> <p>18 Q. One way or the other?</p> <p>19 A. Right.</p> <p>20 Q. Well, after September 25, 2016,</p> <p>21 which, by the way, is, what, nine days after you</p> <p>22 worked on finalizing a press release, which was</p> <p>23 made public announcing in your words of the press</p> <p>24 release, the Corps had granted a special use</p> <p>25</p>	<p style="text-align: right;">Page 269</p> <p style="text-align: center;">Crook</p> <p>1 A. I don't have knowledge of his</p> <p>2 specific conclusion at this time beyond this.</p> <p>3 Maybe between him and other people in the Omaha</p> <p>4 office that I wasn't copied on.</p> <p>5 Q. Well, you're the principal deputy of</p> <p>6 the assistant secretary of the Department of Army</p> <p>7 for Civil Works and you don't know?</p> <p>8 MS. ZILLOLI: Objection.</p> <p>9 Argumentative and this is starting to get</p> <p>10 disrespectful.</p> <p>11 Q. I'm asking a question, Mr. Crook,</p> <p>12 and I'm asking it respectfully, and I'm just</p> <p>13 asking whether you will provide an answer or not.</p> <p>14 MR. SEBY: Miss Zilloli, your</p> <p>15 characterization is inflammatory and improper.</p> <p>16 I'm entitled to ask questions.</p> <p>17 I'm happy to --</p> <p>18 MS. ZILLOLI: I'm entitled to state</p> <p>19 for the record when your tone to the witness is</p> <p>20 disrespectful throughout the entire day. I'm</p> <p>21 just putting it on the record.</p> <p>22 Q. Mr. Crook, I have zero intention of</p> <p>23 being disrespectful to you, sir. I'm asking you</p> <p>24 if you know the answer to my question.</p> <p>25</p>

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2 A. Can you restate the question,

3 please.

4 Q. Yes.

5 This date of September 25th is the

6 district, deputy district commander is asserting

7 in response to information provided to him and

8 Colonel Henderson that the Standing Rock Sioux

9 Tribe did not have control over the protest camp,

10 and Major Startzell's remarks and reply to that

11 information is that's consistent with Colonel

12 Henderson's assessment.

13 And I'm asking you based upon that

14 email, which we can read in front of us together,

15 if you disagreed with that or if you were

16 concerned about the proximity of that time frame

17 with the fact that the Corps had just announced

18 granting and issuing a permit to the Standing

19 Rock Sioux Tribe to be on Corps property?

20 A. And I said that I was generally

21 aware at some point in time that there were

22 concerns about the tribe's control over the

23 protests.

24 I don't specifically know what I

25 knew or didn't know at this time or what

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2 Henderson, Colonel Henderson did or didn't mean

3 on this email.

4 Q. Okay.

5 A. Beyond what's on its face.

6 Q. Sure. Thank you.

7 Let me ask you then, Mr. Crook,

8 after this email date of September 25, 2016, did

9 the Corps of Engineers or any agency with law

10 enforcement capability of the Federal Government

11 ever take any responsibility for what was

12 happening?

13 MS. ZILLOLI: Objection. Vague and

14 calls for a legal conclusion.

15 A. I guess I'm not exactly sure what

16 you mean by "take responsibility."

17 Q. Okay.

18 What steps or actions did the Corps

19 take to address trespassers on its property?

20 MS. ZILLOLI: Objection. Assumes

21 facts.

22 Q. Did you take any steps?

23 A. Regarding the protesters, eventually

24 the Corps of Engineers issued an announcement on

25 the November 25th that they needed to leave by a

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2 date certain in December, which caused a majority

3 of the protests to leave the site shortly

4 afterward.

5 Q. I think you were asked this

6 question, but I can't recall your answer, so I'll

7 ask it again.

8 Did the Corps issue any citations to

9 any protesters?

10 A. And I think I said I'm not aware of

11 whether or not they issued citations.

12 Q. Okay.

13 Did the Corps of Engineers ever ask

14 the United States Department of Justice or the

15 U.S. Attorney's office for the District of North

16 Dakota to ever enforce the Corps Title 36

17 regulations in Federal Court?

18 MS. ZILLOLI: Objection,

19 speculation, foundation.

20 Q. I'm asking you, sir, as an officer

21 of the Corps of Engineers whether or not you are

22 aware of such a request ever being made?

23 A. I don't know of what requests were

24 made from the Corps to the Department of Justice

25 regarding potential litigation.

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1 Crook

2 Q. Well, my question is different than

3 your answer. I just want to rephrase it because

4 perhaps you may not have understood it.

5 Did the Corps of Engineers ever ask

6 the U.S. Department of Justice through the

7 Justice Department itself or the U.S. Attorney's

8 Office in North Dakota to enforce any citations

9 that the Corps issued to protesters before a

10 Federal United States Magistrate Judge?

11 MS. ZILLOLI: Same objections.

12 A. I don't know.

13 Q. You do not know?

14 A. No.

15 Q. Okay.

16 Did the Corps of Engineers ever ask

17 the State of North Dakota or local or state law

18 enforcement to ever enforce trespass law on the

19 Corps of Engineers property?

20 MS. ZILLOLI: Objection, foundation,

21 speculation.

22 A. I don't know what specific

23 conversations or requests were had between the

24 Omaha District and law enforcement in the area.

25 Q. To your knowledge, is what I'm

271:18-272:4  
611

ND OBJ.:  
As to  
271:20-21,  
Relevance

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<p style="text-align: right;">Page 274</p> <p>1 Crook</p> <p>2 asking, do you know that that was ever</p> <p>3 affirmatively done?</p> <p>4 A. I don't know.</p> <p>5 Q. Okay.</p> <p>6 Do you know, sir, did the Corps of</p> <p>7 Engineers ever ask North Dakota or Morton County</p> <p>8 to evict or arrest trespassers on the Corps</p> <p>9 property?</p> <p>10 A. There again I don't know what</p> <p>11 conversations occurred between the Omaha District</p> <p>12 and local law enforcement officials.</p> <p>13 Q. You do not know?</p> <p>14 A. Right.</p> <p>15 Q. Okay.</p> <p>16 Mr. Crook, are you aware of whether</p> <p>17 or not the chief of engineers, Todd Semonite, or</p> <p>18 Major General Spellmon, the Division Commander of</p> <p>19 the Northwest Division of the Corps of Engineers</p> <p>20 ever referred to the protesters on Corps land as</p> <p>21 trespassers?</p> <p>22 A. Sitting here today, I couldn't tell</p> <p>23 you whether they ever used specific language.</p> <p>24 Q. You don't recall that being the</p> <p>25 case?</p>	<p style="text-align: right;">Page 276</p> <p>1 Crook</p> <p>2 to remain on its property?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 Who made the decision to allow</p> <p>6 protesters to remain on Corps property?</p> <p>7 A. Well, the decision regarding the</p> <p>8 special use permit, as we've discussed, was</p> <p>9 Colonel Henderson but in consultation with, you</p> <p>10 know, the vertical chain at the Corps and the</p> <p>11 Army and other agencies.</p> <p>12 Q. If we could go to Exhibit 432.</p> <p>13 Mr. Crook, this is an email chain</p> <p>14 from Tracy Sutton, and I believe earlier we spoke</p> <p>15 about her as being an assistant to the United</p> <p>16 States Senator Heidi Heitkamp; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. So this email starts on October 2nd</p> <p>19 of 2016. She emails you, Mr. Crook, and she</p> <p>20 says, "Mr. Crook, Senator Heitkamp has seen the</p> <p>21 AP story where a spokesperson from the Corps has</p> <p>22 indicated that folks won't be removed from the</p> <p>23 protest site. Is this accurate? If so, where</p> <p>24 does this leave the current leaseholder?"</p> <p>25 And you replied to her the next day,</p>
<p style="text-align: right;">Page 275</p> <p>1 Crook</p> <p>2 A. I don't recall whether or not they</p> <p>3 would have used the word "trespassers" about</p> <p>4 them.</p> <p>5 Q. Okay.</p> <p>6 Mr. Crook, do you recall whether the</p> <p>7 Corps ever considered and made a decision</p> <p>8 affirmatively to do it or affirmatively not to</p> <p>9 allow protesters on Corps land to stay?</p> <p>10 A. I now recall that the specific</p> <p>11 announcement on the 16th that you showed me and</p> <p>12 that, as I mentioned, I recall the announcement</p> <p>13 that was made on November 25th.</p> <p>14 Q. I'm sorry.</p> <p>15 You gave two examples in response to</p> <p>16 my question, one was Colonel Henderson's</p> <p>17 November 25 letter.</p> <p>18 What was the first one?</p> <p>19 A. The announcement regarding the</p> <p>20 special use permit on September 16th.</p> <p>21 Q. The press release?</p> <p>22 A. Yes.</p> <p>23 Q. And that's your answer to the</p> <p>24 question of whether or not the Corps ever</p> <p>25 affirmatively made a decision to allow protesters</p>	<p style="text-align: right;">Page 277</p> <p>1 Crook</p> <p>2 in the morning saying "What's the best number to</p> <p>3 reach you?" She gives it to you.</p> <p>4 And then you say, "It looks like I</p> <p>5 missed you earlier. I just tried to call you</p> <p>6 back." So that's all we know from that exchange.</p> <p>7 So if we could go to 433, please.</p> <p>8 Okay. This is an email, two-part email, and it</p> <p>9 is the same day you were corresponding with Miss</p> <p>10 Sutton from Senator Heitkamp's office, and it</p> <p>11 looks like an individual with the Corps by the</p> <p>12 name of Kayla Eckert Uptmor independently wrote</p> <p>13 to Miss Sutton and the subject says "Response to</p> <p>14 text inquiry."</p> <p>15 "Good morning, Tracy. You sent me a</p> <p>16 text asking 'the same thing I just read from the</p> <p>17 email that Miss Sutton send to you, my boss,</p> <p>18 Senator Heitkamp has seen the AP story which says</p> <p>19 the Corps isn't going to be removing people from</p> <p>20 the protest site in North Dakota. Is this true?</p> <p>21 If so, where does that leave things with the</p> <p>22 current lease header'."</p> <p>23 And Miss Eckert Uptmor proceeds to</p> <p>24 provide a response to the Senator's assistant,</p> <p>25 which says, "In short, the Corps of Engineers</p>

276:5-11  
611, calls for legal  
conclusion  
701-702

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<p style="text-align: right;">Page 278</p> <p>Crook</p> <p>invokes only proprietary jurisdiction over its project lands, which allow us to issue citations for violations but not arrest or take any other law enforcement action.</p> <p>"For that reason, we, the Corps, rely on local law enforcement to enforce state and local law violations like trespassing. Because it is a leased property to Mr. Meyer, as the lessee, he is in the best position to request assistance from the local law enforcement to have the trespassers removed from the lands. He has indicated that he does not plan to do that, anything.</p> <p>"Currently, Colonel Henderson and chairman Archambault are in daily contact and working a path forward that will both anticipate that they both anticipate will resolve the issues in the near term," and then Miss Eckert Uptmor, after she sends that message to the senator's assistant, forwards it to you with no message.</p> <p>Do you recall this communication?</p> <p>A. Just to correct, it looked like Tracy Sutton, the senator's aide, forwarded it to me.</p>	<p style="text-align: right;">Page 280</p> <p>Crook</p> <p>Q. Okay.</p> <p>Or if you ever did?</p> <p>A. Right.</p> <p>Q. Okay.</p> <p>But you talked to her all the time, many times; is that what you're saying?</p> <p>A. I talked to her many times during this period.</p> <p>Q. Okay.</p> <p>So, let's see. Let's go to Exhibit 441.</p> <p>So, Mr. Crook, this is one of the longer email chains we're going to go over because I want to ask you about the final email in this chain, which happens to be from the Chief of Engineers of the United States Army Corps of Engineers Todd Semonite to Major General Jackson and Brigadier General Scott Spellmon and copied to you.</p> <p>Can you please take a moment and read this email sting so that I can ask you about this email to you from Chief of Engineer Semonite, please.</p> <p>A. Can we start from the earlier part</p>
<p style="text-align: right;">Page 279</p> <p>Crook</p> <p>Q. Oh, you're correct. The senator's assistant, Miss Sutton, sent it to you, and she sent it to you later that morning, and it seems to be about the time that you were trading emails about getting in touch to have a call; is that right?</p> <p>A. Yes.</p> <p>Q. Did you ever speak with her?</p> <p>A. Many times.</p> <p>Q. Did you say or do anything to clarify that the guidance that was provided and that is to her question, are you and the Corps going to do anything to get these people off your land?</p> <p>A. I recall both Senator Heitkamp and her staff raising the issue of the grazing lease area of the land, but I don't recall specifically what I said to her of the conversation on this morning.</p> <p>Q. So do you recall ever answering her question about whether or not the Corps was going to remove trespassers?</p> <p>A. I don't recall specifically answering that question for her.</p>	<p style="text-align: right;">Page 281</p> <p>Crook</p> <p>of the chain and work upwards, if that's okay.</p> <p>Q. Here we go.</p> <p>A. Thank you. Can you scroll up just a little bit. Our screen is covering something. A little bit. That's fine, too. Okay. Can you scroll up a little bit, please. Okay. Okay.</p> <p>Okay. Okay. Can you scroll down a little bit. Scroll up a little more, please. Down a little bit. Just a little bit more, please. Down a little bit more, please. Thank you. Up a little bit. Sorry. Okay. A little bit higher. Okay.</p> <p>Q. Good. You made your way through that lengthy chain?</p> <p>A. Yes, finally.</p> <p>Q. Thanks.</p> <p>Mr. Crook, I want to ask you about now just General Semonite, Chief of Engineer Semonite's email, which is at the top of this chain, and I just will observe that the email started with General Jackson. No, I take that back. It started with a -- yes, it did. General Jackson corresponding with Brigadier General Spellmon, and that's the two of them on that communication. Then Spellmon responds and</p>

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2 Jackson replies and then Spellmon -- Jackson then

3 responds to Spellmon and he adds Secretary Darcy

4 and the chief of engineers, "Madam Secretary and

5 chief, Wanted you both to have this in advance of

6 your engagements tomorrow."

7 This is October 13th.

8 To that, Chief of Engineer Semonite

9 responds to just you, Brigadier General Spellmon

10 and Major General Jackson, the three of you, and

11 he structured his email to the three of you with

12 specific questions before he gets into a request

13 for all of you have to huddle tomorrow before he

14 speaks with North Dakota, United States Senator

15 John Hoeven.

16 His note to you, which starts the

17 email, "Lowry, I am ready to get personally

18 involved here. Current plan is not working. Not

19 sure anything Has Gotten Better." Since our last

20 meeting with Senator Hoeven, if anything,

21 situation has degraded. If there is a Master

22 Strategy would like to know it. I see this with

23 high potential for increased conflict. Please

24 let me know what I can to assist in getting a

25 solution. Can't sit on this much longer without

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1 Crook

2 a feasible Plan In A Timely Manner."

3 It seems like he's pretty wound up

4 using capital letters to you, don't you think? I

5 mean, is that how he normally communicates to

6 you, randomly highlights words capitalizing them?

7 A. Actually, that is a habit of his on

8 most of his written communications.

9 Q. Okay.

10 And what is he trying to do with all

11 capping certain words?

12 MS. ZILLOLI: Objection,

13 speculation.

14 Q. Well --

15 A. It appears to be, you know,

16 emphasizing those words.

17 Q. Okay. Thanks. I figured you'd know

18 because you had at least the knowledge to say,

19 yeah, he does it all the time, right?

20 A. He does it very frequently, yes.

21 Q. It doesn't sound like speculation to

22 me.

23 So, Mr. Crook, he then guess on to

24 say "Ed," he's referring to Ed Jackson or Scott,

25 and Scott Spellmon, "Tracking all, this is just

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1 Crook

2 as we discussed a few days ago. We need to keep

3 thinking through our responsibilities if we get a

4 course case option. More arrests, no movement

5 off camp and the company starts working the 20

6 mile area. More arrest and injuries. Concrete

7 and structures go up on northern and southern

8 camp in prep for winter/national rally to cause

9 of Indians within three weeks of election."

10 And then he says to you all "Would

11 like to huddle tomorrow before the Hoeven call.

12 Please help me understand a few issues."

13 The chief of engineers is asking the

14 three of you to meet to help him understand some

15 issues, right?

16 A. I don't know if he was expecting me

17 to huddle with him or just Jackson and Spellmon

18 with this email.

19 Q. Okay.

20 What do you make of this? You're

21 just identified by name with observations. He's

22 talking about getting ready to talk with Senator

23 Hoeven, and you don't think he's asking you to be

24 part of the discussions on these five significant

25 issues he wants to know about?

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1 Crook

2 A. I don't personally know his intent

3 behind it, but it's not clear to me whether he

4 was requesting that I join the prep for the

5 Hoeven call or just Jackson and Spellmon is all

6 I'm saying.

7 Q. Did you participate or not with him

8 in response to this email?

9 A. I don't recall whether I joined a

10 prep session the next day or not.

11 Q. Do you recall speaking to any of the

12 issues that he's identified here below because

13 you've just read this email and know what they

14 are?

15 A. I mean, I recall that there, you

16 know, subsequent to this email there were

17 numerous conversations about the various issues

18 that he covers in it.

19 Q. Well, okay.

20 So you just don't know if you gave

21 any input to what he was asking for input on?

22 A. I don't think I responded

23 specifically to this email.

24 Q. Not the question.

25 A. Okay.

283:3-8,  
283:17-20  
401-402



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2 Q. The question was did you participate

3 in a discussion or around communication with the

4 chief of engineers when he wrote to you and two

5 other gentlemen asking to help him understand a

6 few issues?

7 A. We had conversations about these

8 issues subsequent to this email.

9 Q. When?

10 A. I don't know the specific time

11 period.

12 Q. Okay. Okay.

13 So you don't know if you spoke to

14 him to help him prepare for speaking with Senator

15 Hoeven or if it was after that, but you do recall

16 speaking with him at some time on these issues?

17 A. I recall he and I attending meetings

18 with both Senators Hoeven and Senator Heitkamp

19 together and having discussions before and after

20 those meetings about the issues like these that

21 the senators were raising.

22 Q. Okay.

23 So, Mr. Crook, based upon your

24 position and your knowledge of events and your

25 presence in communicating with the chief of

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1 Crook

2 engineers and Major Jackson and Scott Spellmon

3 and Miss Darcy, the chief of engineers is asking,

4 at least in this email, which is at issue, you

5 said you discussed later title trespassing. It

6 is all caps and, as you said, he does that when

7 he wants to add emphasis. He adds emphasis by

8 identifying trespassing.

9 He says "What is our position to

10 Congress?" Our being I think you're all part of

11 the, at least, the Department of the Army and,

12 more specifically, the Corps of Engineers, right?

13 So that's ours.

14 Do you have any dispute with that?

15 MS. ZILLOLI: Objection. Misstates

16 evidence and testimony.

17 Q. Mr. Crook, I'm asking --

18 A. I mean beyond looking at his face, I

19 don't know what he had in mind for our, whether

20 he meant the Corps or the Army at large.

21 Q. Well, keep reading the sentence

22 because it answers your question.

23 A. Okay.

24 Q. Why the Corps has allowed

25 trespassing and camping on government land on the

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1 Crook

2 north side.

3 What did you give him feedback on

4 that, whenever you talked to him, whenever that

5 was?

6 A. I don't recall whether I had a

7 specific conversation with him directly answering

8 this.

9 Q. Mr. Crook --

10 A. Yes.

11 Q. -- did you duck speaking with

12 general Semonite ever on this issue or -- I'm

13 sorry.

14 Did you duck out on ever speaking

15 about this issue with Chief Semonite or did you

16 ever have a conversation with him on this topic?

17 Here he's asking you for, but apart from this,

18 did you ever talk about this issue?

19 MS. ZILLOLI: Objection. Misstates

20 evidence. Argumentative.

21 A. I don't believe I ducked any

22 conversations with General Semonite. It's just

23 there were many conversations at various levels

24 between him and Miss Darcy and me and the chief

25 of staff of the Army about these general issues,

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1 Crook

2 and I just don't remember specifically how and

3 whether I responded to this email directly to

4 him.

5 Q. What was your position as principal

6 deputy on the question that General Semonite is

7 asking: Why the Corps has allowed trespassing on

8 government land on the north side of the

9 Cannonball River?

10 A. My position was that I understood

11 that there were First Amendment concerns that the

12 Corps was responding to; that there were

13 questions about the Corps having capacity to

14 enforce any demands it made, given that the Corps

15 generally doesn't have law enforcement, and that

16 there were concerns from Department of Justice

17 and other agencies with law enforcement expertise

18 about the potential results of a confrontation of

19 the protesters.

20 Q. Earlier I asked you whether or not

21 you were aware the Corps ever issued citations,

22 and you, I believe, you told me you were not

23 aware?

24 A. That's correct.

25 Q. And I also asked you whether you

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2 were aware that the Corps asked any other federal

3 agencies to take measures to evict trespassers on

4 its property, and you said you were not aware of

5 any?

6 A. I believe it was a more specific

7 question about going to federal court or

8 something but I --

9 Q. That was a different question.

10 A. Okay. I may just be conflating

11 questions.

12 Q. General Jackson, pardon me. General

13 Semonite is saying with respect to why the Corps

14 has allowed trespassing on government land on the

15 north side, he goes on to say "Dot, dot, dot

16 effectively condoning the tribes to violate the

17 law both on our land as well as other lands.

18 When is the Corps going to do something to get

19 this under control? While many might move to

20 other camps, some will stay just to embolden the

21 effort. Is there some event that will cause us,

22 the Corps, to ask the sheriff to enforce the

23 law?"

24 What is your response to that series

25 of questions that is in an email to you from Todd

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2 Semonite, the Chief of the United States Army

3 Corps of Engineers?

4 A. My response to the first question is

5 I wouldn't necessarily use those words to

6 describe what was happening.

7 The response to the next questions

8 about what might cause USACE to ask the sheriff

9 to enforce the law, I did not know the answer to

10 that question.

11 Q. And so you don't agree, your first

12 point was you don't agree with the way the chief

13 of engineers was characterizing the circumstances

14 of what was happening is what I understand you

15 said or the description of what was happening?

16 A. I wouldn't have used the same words

17 that he used.

18 Q. Did you tell him you disagreed with

19 his characterization?

20 A. I don't recall telling him that.

21 Q. Why?

22 A. There was a lot going on and,

23 usually, my conversations with him were very

24 focused on specifically preparing for, you know,

25 responding to one of the congressional

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1 Crook

2 delegations or preparing to, you know, brief the

3 Army leadership versus characterizing or

4 responding to how he worded an email.

5 Q. Mr. Crook, was the Chief of

6 Engineers Todd Semonite your boss?

7 A. No.

8 Q. Did you have to listen to what he

9 asked you to do?

10 A. I did listen to his views.

11 Q. Did you have to -- were you required

12 to follow his direction?

13 A. No.

14 MS. ZILLOLI: Counsel, can we go off

15 the record, please.

16 MR. SEBY: Okay.

17 THE VIDEOGRAPHER: We are off the

18 record 10:32 p.m. UTC, 6:32 p.m. Eastern.

19 (Off the record.)

20 THE VIDEOGRAPHER: Back on the

21 record. 6:33 p.m. Eastern, 10:33 p.m. UTC.

22 Q. Mr. Crook, if we could go to exhibit

23 443, please, and this is an email string that

24 starts with an email from John Henderson, Colonel

25 Henderson to Scott Spellmon. You're not copied

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1 Crook

2 on this, but you're eventually forwarded the

3 whole thing and Colonel Henderson says, "Sir,"

4 addressed to Spellmon, "Attached is our draft

5 press release for your review and further

6 coordination. The timing is not important.

7 We'll change the items related to the tense and

8 timing if it goes out later than today,

9 October 28, 2016."

10 Spellmon writes back, no, he

11 doesn't. Spellmon forwards that email to Donald

12 Jackson and says, "Forwarding our recommendation

13 for your situational awareness. This is working

14 its way through staff channels for interagency

15 review as we discussed earlier today."

16 Were you aware of this at that time

17 given your past role and responsibility for

18 advancing interagency review of Corps of

19 Engineers issues?

20 A. I actually don't know what the press

21 release that he's referring to was about. So

22 when say this issue, I don't yet remember what

23 the issue was that they were trying to announce.

24 Q. Understand.

25 If we could go to the attachment to

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<p style="text-align: right;">Page 294</p> <p>1 Crook</p> <p>2 deal with that question.</p> <p>3 A. Could you scroll up a little bit,</p> <p>4 please. Not quite that far. Sorry. That's</p> <p>5 good. Okay. Could you scroll up a little bit</p> <p>6 more, please. Okay. A little bit more, please.</p> <p>7 A little bit more. Okay.</p> <p>8 Q. Have you finished reading it?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 So you know what this draft is about</p> <p>12 that you're ultimately getting a copy of from</p> <p>13 General Jackson.</p> <p>14 Do you recall it now?</p> <p>15 A. Can I read his email to me before we</p> <p>16 proceed further?</p> <p>17 Q. You bet. I'm sorry. Please do</p> <p>18 that.</p> <p>19 A. All right. Thanks. Just a little</p> <p>20 higher. Something is getting blocked. Okay.</p> <p>21 Q. Do you see that. Now your email</p> <p>22 received from Jackson to you.</p> <p>23 It reads to me like he's asking you</p> <p>24 to do what you did before, and that is liaison it</p> <p>25 with the appropriate folks. I assume that's your</p>	<p style="text-align: right;">Page 296</p> <p>1 Crook</p> <p>2 project. The permit is set to expire October 30,</p> <p>3 and the commander has decided that recent events</p> <p>4 have contributed to an environment that is</p> <p>5 neither peaceful, nor safe," and then he down</p> <p>6 below talks about some reported illegal</p> <p>7 activities; but I want to ask you a fundamental</p> <p>8 question, Mr. Crook.</p> <p>9 What did you think about this, the</p> <p>10 premise of this press release that's evident in</p> <p>11 the title and the first paragraph of the draft,</p> <p>12 how did you react when you read that?</p> <p>13 A. I don't know what my specific</p> <p>14 reaction to the press release was. It appears</p> <p>15 consistent with concerns that I was hearing</p> <p>16 during that general time period.</p> <p>17 Q. Mr. Crook, do you think that, do you</p> <p>18 agree with me that that first paragraph in the</p> <p>19 title assumes that there ever was a special use</p> <p>20 permit issued in final to the Standing Rock Sioux</p> <p>21 Tribe that provided them with permission to be on</p> <p>22 Corps of Engineers property? Do you agree with</p> <p>23 me that that assumes that fact?</p> <p>24 A. It says renew and authorize, so,</p> <p>25 yes, that appears implicit in the language.</p>
<p style="text-align: right;">Page 295</p> <p>1 Crook</p> <p>2 interagency coordination group and asking for</p> <p>3 your feedback and wants to talk to you about it.</p> <p>4 Tell me about your conversations</p> <p>5 with General Jackson on this draft press release</p> <p>6 from Colonel Henderson, October 28, 2016.</p> <p>7 A. Again, I don't recall the specifics,</p> <p>8 but my general practice would have been to share</p> <p>9 this with the other agencies that we discussed</p> <p>10 and with the White House to both for their</p> <p>11 awareness and to get any questions or concerns</p> <p>12 they may have.</p> <p>13 Q. Okay.</p> <p>14 So with respect to the draft press</p> <p>15 release that you would share with those folks,</p> <p>16 the title of it says Standing Rock Sioux Tribe</p> <p>17 permit not renewed. Corps concerned over</p> <p>18 escalation and public safety.</p> <p>19 In the first paragraph says, "The</p> <p>20 Omaha district commander in coordination with the</p> <p>21 Standing Rock Sioux Tribe has decided not to</p> <p>22 renew the social use permit which authorized the</p> <p>23 use of federal land for the peaceful</p> <p>24 demonstration by members of the Standing Rock</p> <p>25 Sioux Tribe against the Dakota Access Pipeline</p>	<p style="text-align: right;">Page 297</p> <p>1 Crook</p> <p>2 Q. Again, more specifically, and to</p> <p>3 quote the document we're looking at, "The Omaha</p> <p>4 district commander in coordination with the</p> <p>5 Standing Rock Sioux Tribe has decided not to</p> <p>6 renew the special use permit which authorized the</p> <p>7 use of federal land."</p> <p>8 Was there ever such a permit in</p> <p>9 final place that authorized that use?</p> <p>10 MS. ZILLOLI: Objection to the</p> <p>11 extent it calls for a legal conclusion.</p> <p>12 A. I know there were questions about</p> <p>13 the status of the permit, you know, based on the</p> <p>14 previous emails that you showed me.</p> <p>15 Q. Mr. Crook --</p> <p>16 A. I don't have a conclusion as to what</p> <p>17 was operable or not operable regarding that</p> <p>18 permit at that time.</p> <p>19 Q. Okay.</p> <p>20 Did you ever have a position on</p> <p>21 whether it was a final effective permit or not?</p> <p>22 A. I don't think I had position on</p> <p>23 that. I just recall it being a question.</p> <p>24 Q. Do you know, did you ever see the</p> <p>25 Standing Rock Sioux Tribe comply with the</p>

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<p style="text-align: right;">Page 298</p> <p style="text-align: center;">Crook</p> <p>1 conditions of the permit in order for it to be</p> <p>2 finally and effective?</p> <p>3</p> <p>4 A. I do not believe and in this</p> <p>5 document says that there were conditions of the</p> <p>6 permit with which they did not comply.</p> <p>7 Q. Did you ever read the special use</p> <p>8 permit, Mr. Crook?</p> <p>9 A. I believe I did read the special use</p> <p>10 permit at some point.</p> <p>11 Q. Were you ever affirmatively told</p> <p>12 that the tribe complied with the requirements of</p> <p>13 that permit, namely, providing liability</p> <p>14 insurance and the size of the crowd to be on that</p> <p>15 property?</p> <p>16 A. I do not recall being told that they</p> <p>17 complied with those requirements.</p> <p>18 Q. Were you told that they did not</p> <p>19 comply with those requirements?</p> <p>20 A. I believe that I was told that they</p> <p>21 had not met those conditions.</p> <p>22 Q. So how did you ever conclude that</p> <p>23 there was a permit in place?</p> <p>24 MS. ZILLOLI: Objection. Misstates</p> <p>25 testimony.</p>	<p style="text-align: right;">Page 300</p> <p style="text-align: center;">Crook</p> <p>1 the other individuals that I mentioned are ccs.</p> <p>2</p> <p>3 So he says, so General Jackson says</p> <p>4 to you, "Lowry, we need to be prepared to clarify</p> <p>5 the record on this. So need your thoughts on how</p> <p>6 best to do so," and the subject line says</p> <p>7 "President Obama video on Army Corps and</p> <p>8 rerouting pipeline."</p> <p>9 And the General Jackson's note to</p> <p>10 you asking for clarification of the record on</p> <p>11 this, the President's presentation remarks on the</p> <p>12 video and asking you how best to do that, right?</p> <p>13 And have you read the remarks</p> <p>14 attributed to President Obama that are below that</p> <p>15 hash line here?</p> <p>16 A. Can you give me a minute to read</p> <p>17 them real quick?</p> <p>18 Q. Oh, yeah.</p> <p>19 A. Can you scroll down a little bit,</p> <p>20 please. Not quite that far. Sorry. Right.</p> <p>21 Okay.</p> <p>22 Q. Okay.</p> <p>23 So do you want to read anything else</p> <p>24 or can I ask you a question?</p> <p>25 A. Go ahead, please.</p>
<p style="text-align: right;">Page 299</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 A. I think, as I said, I didn't have a</p> <p>3 conclusion on that issue. I knew that it was a</p> <p>4 question.</p> <p>5 Q. You didn't have a position?</p> <p>6 A. No, not that I recall.</p> <p>7 Q. Okay.</p> <p>8 What did you think of this idea of</p> <p>9 revoking a permit that you didn't know was ever</p> <p>10 final or not renewing? Pardon me.</p> <p>11 A. I don't know that I had -- that I</p> <p>12 was focused on that issue when I received this</p> <p>13 email and draft.</p> <p>14 Q. Okay.</p> <p>15 Now, if we could go to Exhibit 446,</p> <p>16 please.</p> <p>17 Mr. Crook, would you read the email</p> <p>18 here in its entirety. It's two component email.</p> <p>19 The last, the first one is from General Jackson</p> <p>20 to you and copied to Todd Semonite, the chief of</p> <p>21 engineers, and Brigadier General Spellmon and</p> <p>22 David Cooper, but Jackson's email is just</p> <p>23 identified to you.</p> <p>24 In fact, you're the only, well, you</p> <p>25 and Miss Darcy are the direct recipients and then</p>	<p style="text-align: right;">Page 301</p> <p style="text-align: center;">Crook</p> <p>1</p> <p>2 Q. Okay.</p> <p>3 So it looks like this, this is a --</p> <p>4 it's got a series of quotes in here but the</p> <p>5 sentence before the quote says "President Obama</p> <p>6 addressed the Dakota Access Pipeline controversy</p> <p>7 for the second time Tuesday," and saying his</p> <p>8 administration is looking for a way to reroute</p> <p>9 the pipeline.</p> <p>10 And there's some quotes in there</p> <p>11 and, apparently, this was on an MSNBC television</p> <p>12 program called "The Last Word with Lawrence</p> <p>13 O'Donnell."</p> <p>14 And the President is, has a quote</p> <p>15 here that's attributed to him from this video, "I</p> <p>16 think right now that the Army Corps of Engineers</p> <p>17 is examining whether there are ways to reroute</p> <p>18 this pipeline."</p> <p>19 Then the next sentence says,</p> <p>20 "Tensions in North Dakota are rising between</p> <p>21 police and pipeline protesters who have been</p> <p>22 demonstrating for weeks."</p> <p>23 And then there's another quote</p> <p>24 attributed to the President below, "We're going</p> <p>25 to let it play out for several more weeks and</p>

301:3-  
302:12,  
304:13-  
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306:23-  
307:4,  
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1 then determine whether or not this can be

2 resolved in a way that I think is properly

3 attentive to the traditions of the First

4 Americans," Obama said.

5 So major General Jackson is sharing

6 that with you.

7 Were you aware of this Lawrence

8 O'Donnell program prior to General Jackson

9 forwarding it to you?

10 A. I don't recall if I was aware before

11 or this is the first I heard of it.

12 Q. Okay.

13 But you do recall the event?

14 A. I do.

15 Q. Did you ever watch the video?

16 A. Actually, I don't know if I ever

17 watched it or just read the words.

18 Q. Okay.

19 Well, nonetheless, Major General

20 Jackson, here at least in this instance,

21 abundantly clear "Lowry, we need to be prepared

22 to clarify the record on this. Need your

23 thoughts on how best to do it."

24 What did you think needed to be

25

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1 clarified according to Major Jackson?

2 A. I mean, he'd be best to answer what

3 he was most concerned about or thought needed to

4 be clarified beyond the, you know, what was

5 stated in his email.

6 Q. Okay.

7 So we should ask General Jackson?

8 A. What he means in his email?

9 Q. Yes.

10 A. Yes.

11 Q. Is that right? Is that what you're

12 saying?

13 A. Yes, he would best know what he

14 meant.

15 Q. Best know, sure, because he said it.

16 But did you know what he was talking

17 about, what needed to be clarified?

18 A. I read it to be the statement that

19 the Corps is examining whether there are ways to

20 reroute the pipeline.

21 Q. And what did you think needed to be

22 clarified about that?

23 A. I believe at the time that our

24 announcement on the pipeline or statements on the

25

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1 pipeline was that we were reviewing -- that goes

2 beyond what we had publicly said we were doing,

3 and it's different from what we had publicly said

4 we were doing.

5 Q. Okay.

6 So that needed to be clarified,

7 right?

8 A. I believe, well, General Jackson was

9 asking for it to be clarified.

10 Q. Well, he's asking for your thoughts

11 on how best to do that.

12 So what thoughts did you have with

13 Major General Jackson in response to his email to

14 you identifying you as the person that he was

15 asking you to share your thoughts on?

16 A. I recall reaching out to the White

17 House, specifically Dan Utech and the Office of

18 Legislative Affairs at the White House, to talk

19 about the issue because I was also getting

20 congressional inquiries about it.

21 Q. Yes. In fact, the rest of this

22 email is your forwarded email to Mr. Utech saying

23 and Miss Billingsley, who was the special

24 assistant to the President, you were letting them

25

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1 know that General Jackson is asking about this

2 and wants to clarify it.

3 So you said let's discuss, and you

4 do mention you just got off the phone with

5 Senator Heitkamp also making similar inquiry.

6 So what happened? What did you do?

7 What did you discuss with the White House, these

8 two senior officials in the White House?

9 Seems to me Jackson is telling you

10 that the President got ahead of his skis.

11 A. Yeah or he got ahead of what we had

12 stated publicly, not ahead, but beyond or

13 different than what we had stated publicly.

14 I believe that, A, I wanted to know

15 if there was, you know, generally what the White

16 House position was and if it was different than I

17 had understood based on our previous

18 conversations.

19 So I believe I was as focused on

20 what it meant that the President said that as

21 whether we needed to get a clarification or not.

22 Q. What did you learn from those

23 individuals at the White House?

24 MS. ZILLOLI: Objection to the

25

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<p style="text-align: right;">Page 306</p> <p>Crook</p> <p>extent the answer would implicate deliberative process materials. If you could answer without disclosing deliberative process information, then you can answer.</p> <p>A. I don't believe they gave me really any specific feedback or discussion of, you know, what may have been discussed or not discussed with the President about this.</p> <p>Q. Did they agree or disagree with the statement you just made that you went to them because you thought and, clearly, General Jackson thought that the President made remarks on MSNBC on video that said, in your opinion, I think you just said went ahead, beyond or were different than what the Corps was saying or doing publicly.</p> <p>Did the people in the White House that you brought that concern to share that opinion or not?</p> <p>MS. ZILLOLI: Objection, speculation.</p> <p>Q. Well, you spoke to them, sir.</p> <p>What did they say?</p> <p>A. I believe I pointed out the difference between what we had said and what the</p>	<p style="text-align: right;">Page 308</p> <p>Crook</p> <p>compared to what the President was saying, how did they react?</p> <p>A. I don't recall specifically how they reacted.</p> <p>Q. Okay.</p> <p>So after you sought their discussion on this issue, when did you ever get back to General Jackson on his question to you for thoughts on best to clarify the fact that the president made remarks which were different than what the Corps was saying publicly?</p> <p>A. I don't recall the specific conversations or communications. My general practice would have been to share with him that I shared this with the White House and was, you know, waiting on additional feedback.</p> <p>I would have given him status reports of what I knew, but I don't recall specifically what I said to answer his question.</p> <p>Q. You don't recall what you said in response to the President's remarks that you already observed were inconsistent and different than what the Corps had been saying? You don't recall?</p>
<p style="text-align: right;">Page 307</p> <p>Crook</p> <p>President said.</p> <p>So, yes, they were aware there was a difference.</p> <p>MS. ZILLOLI: Counsel, we are almost half an hour over the seven hours allotted time. I would just ask that you wrap it up.</p> <p>MR. SEBY: Glad to. I just want to finish this question. It may be uncomfortable but I want to hear the answer.</p> <p>MS. ZILLOLI: I'm not objecting to the fact that the question is uncomfortable. We agreed at the break to 15 more minutes. It has been more than 15 minutes since that break, and we are already over time. I would just ask that you finish this line of questioning soon.</p> <p>Q. Mr. Crook, I need your help to do that.</p> <p>Would you answer my question, please.</p> <p>A. Sorry. Can you restate the question?</p> <p>Q. Yup.</p> <p>Did, after you pointed out the difference in what the Corps was saying and</p>	<p style="text-align: right;">Page 309</p> <p>Crook</p> <p>A. Because I know that I shared the issue with the White House. I don't recall getting a specific response from them or any details from them; and so other than sharing the fact that I shared this with the White House, I don't believe that we got anything back substantive from them to share with General Jackson.</p> <p>Q. So because of that, were you ever in a position to respond to General Jackson's question to you on thoughts on how best to clarify the President's remarks, which were different than what the Corps was saying?</p> <p>A. I don't think that -- I don't recall that anybody clarified the remarks and so there was not an answer to that question.</p> <p>Q. So it just died there with a lack of follow-up from the White House?</p> <p>MS. ZILLOLI: Objection. Asked and answered.</p> <p>A. I -- at some point I believe it was overcome by events.</p> <p>Q. Which events? This was November --</p> <p>A. Announcements we made on --</p>



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<p style="text-align: right;">Page 310</p> <p style="text-align: center;">Crook</p> <p>1 Q. Sorry.</p> <p>2 A. I'm sorry. Go ahead.</p> <p>3 Q. I just wanted to point out to you</p> <p>4 this was November 2nd of 2016.</p> <p>5 After that, what events overcame the</p> <p>6 disparity between the President's remarks about</p> <p>7 the Corps and the Corps public statements about</p> <p>8 what it was doing?</p> <p>9 A. At some point we issued further</p> <p>10 announcement about what we were doing that just</p> <p>11 stated, rather than correcting the President,</p> <p>12 just stated affirmatively what we were doing.</p> <p>13 Q. And what issued communication are</p> <p>14 you referring to specifically that did that?</p> <p>15 A. There was an announcement that the</p> <p>16 Army, Secretary Darcy released on December 6th, I</p> <p>17 believe, about her decision on the easement and</p> <p>18 additional environmental review that would be</p> <p>19 done on the easement.</p> <p>20 Q. Basically running out the clock on</p> <p>21 the Obama Administration, right?</p> <p>22 A. I would not characterize it that</p> <p>23 way.</p> <p>24 Q. By that time a new president of the</p> <p>25</p>	<p style="text-align: right;">Page 312</p> <p style="text-align: center;">Crook</p> <p>1 percentage other than more than half.</p> <p>2 Q. More than half.</p> <p>3 And how do you know that amount?</p> <p>4 A. Press reports and we were getting,</p> <p>5 you know, reports through the chain of command</p> <p>6 about what was happening.</p> <p>7 MS. ZILLOLI: Counsel, I'm sorry.</p> <p>8 I'm going to have to insist that we end. We have</p> <p>9 given you many, many opportunities for leeway,</p> <p>10 and I would just ask that you be respectful of</p> <p>11 the witness' time. We are already well over the</p> <p>12 seven hours I think.</p> <p>13 Q. Mr. Crook, unless you've indicated</p> <p>14 otherwise throughout this deposition today, have</p> <p>15 you understood my questions?</p> <p>16 A. Yes, unless I've needed</p> <p>17 clarification, yes.</p> <p>18 Q. Is there anything further you would</p> <p>19 like to add to what you've said and testimony?</p> <p>20 A. Sorry.</p> <p>21 Q. I'm sorry.</p> <p>22 What's the answer? Did you hear the</p> <p>23 question?</p> <p>24 We talked over each other. I'll</p> <p>25</p>
<p style="text-align: right;">Page 311</p> <p style="text-align: center;">Crook</p> <p>1 United States had been elected and was awaiting</p> <p>2 January 20th to take office, correct?</p> <p>3 A. That is correct.</p> <p>4 Q. All right.</p> <p>5 Mr. Crook, I'm going to wrap up</p> <p>6 here.</p> <p>7 Can you recall the time when you or</p> <p>8 any of your Corps or Department of army</p> <p>9 colleagues made a statement or took any action</p> <p>10 that resulted in any deescalation of the DAPL</p> <p>11 protests occurring on Corps property?</p> <p>12 A. Yes.</p> <p>13 Q. And what would that be?</p> <p>14 A. The December 6th statement caused,</p> <p>15 helped caused the majority of the protesters to</p> <p>16 leave ahead of the winter storm.</p> <p>17 Q. And majority of what amount?</p> <p>18 A. I don't know the specific amount but</p> <p>19 large numbers of them.</p> <p>20 Q. Large numbers.</p> <p>21 What portion of the amount that were</p> <p>22 present on Corps land were caused to leave by</p> <p>23 that December 6th announcement?</p> <p>24 A. I can't give you a specific</p> <p>25</p>	<p style="text-align: right;">Page 313</p> <p style="text-align: center;">Crook</p> <p>1 repeat it again.</p> <p>2 A. Yes. I'm sorry about that. No</p> <p>3 thank you. There's nothing I would like to add</p> <p>4 at this time.</p> <p>5 Q. Okay.</p> <p>6 MR. SEBY: At this time, Miss</p> <p>7 Zilloli, I have no further questions.</p> <p>8 MS. ZILLOLI: Thank you. I have no</p> <p>9 questions and we will read and sign.</p> <p>10 Thank you for this time and I</p> <p>11 appreciate it, and I apologize for the time over</p> <p>12 the seven hours.</p> <p>13 THE VIDEOGRAPHER: This concludes</p> <p>14 the deposition. Time is 7:02 p.m. Eastern, 11:02</p> <p>15 p.m. UTC.</p> <p>16 (Time noted: 7:02 p.m)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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